



*The*  
RISE OF  
CONSTITUTIONAL GOVERNMENT  
IN ENGLAND

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## PREFACE.

THAT constitutional history is very dry, is an axiom admitted by almost all who have never read it; that it is far more interesting than what is commonly received as history, is almost equally admitted by those who have.

Constitutional histories are usually left unread, partly because they are long, partly because they generally contain a great deal of matter which the ordinary reader does not want to know, and partly because their arrangement is such that it is difficult to pick out exactly the information that is sought.

In this book, the author has endeavoured to confine his attention solely to the growth of the present relations between the sovereign, the ministry, the two Houses of Parliament and the people, and to put before the reader



in a plain narrative form the history of their development.

The facts, it is to be hoped, are those which may be found in the large constitutional histories, of Canon Stubbs, Mr. Hallam, Sir Erskine May and Mr. Bagehot, whose works must always be the authorities to which any student of constitutional history will eventually turn; but the present book aims at putting those facts in such a way that they may be read not only by those who have time and opportunity for study, but by the busy man to whom time is an object, and by the student who desires, before embarking, to take a view of the shores of the ocean on which he is in some danger of losing himself.

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# TABLE OF CONTENTS.

## CHAPTER I.

### THE DAWN OF THE ENGLISH CONSTITUTION.

	PAGE
Continuity of English institutions—The sovereign—The Parliament—The law courts—The English in Germany—Tacitus' description—The tribal assembly—The principes and duces—The comitatus—The lord or loaf-giver—The thegn or gesith—Connection with feudalism—The migration to Britain—Division of the land—Shires, hundreds, townships—The rise of kingship—Ealdormen (principes) become kings—Amalgamation of the tribes into kingdoms—Growth of the heptarchy—Increased power of the kings—The witenagemot—The shire-moot—The hundred-moot—The town-moot—Constitution of the witenagemot—Powers of the witenagemot—Prerogatives and revenues of the king	... I

## CHAPTER II.

### ENGLISH KINGSHIP BEFORE THE CONQUEST, AND RISE OF FEUDALISM.

Meaning of heptarchy—Supremacy of Kent—Supremacy of Northumbria—Supremacy of Mercia—Union of England under Egbert—Battle of Ellendun—Invasions of the Danes—Reconquest of the Danelagh—Edward the Elder overlord of Great Britain—Rise of the great earldoms—Earldoms ultimately prejudicial to monarchy—King's power strengthened: 1. By reconquest of the Danes; 2. By submission of Welsh and Scots—Symptoms of its strength—Edgar's position—Cause of decline of the king's power—Rise of feudalism—

Continental feudalism—King, dukes, counts, seigneurs and serfs—Growth of feudalism in England; its origin, the comitatus—The personal tie—The holding of land—The lords' court—Military service—Canute's earldoms—Independence of the earls—Resemblance to continental history...	PAGE 10
---	------------

## CHAPTER III.

## REFORMS OF WILLIAM THE CONQUEROR.

Weakness of Edward the Confessor—Partiality for foreigners—The Norman character—Training of William the Conqueror—Pretexts for invasion—Battle of Senlac and election of William—Importance of the election—Prerogatives of former kings secured—Homage exacted from the king of Scots—Homage refused to the pope—Attitude of William towards his followers—King, feudal superior of all landowners—Abolition of the great earldoms—Establishment of three counties palatine—Careful distribution of forfeited estates—Castles retained in the king's hands—Local courts retained—Fyrd regularly employed—Fealty exacted from every landowner—English and continental nobility compared—Comparative insignificance of English nobles—Absence of private wars—Equality of taxation—Nobility of office, not of birth—Oath exacted from every landowner—William's attitude towards the Church—Restrictions on the papal power—Restrictions on the making of canons—Restrictions on the right of excommunicating—Domesday book—Dissatisfaction of the Normans—Opening of the struggle between the feudal nobility and the crown—Lasting influence of the Conqueror's regulations ... ..	18
---	----

## CHAPTER IV.

## ENGLISH CONSTITUTION UNDER THE NORMAN KINGS.

Policy of William the Conqueror maintained—Election of William Rufus—Barons defeated by the aid of the English—Character of William Rufus—Election of Henry I.—Charter of Henry I.—Imprisonment of Ranulf Flambard—Marriage with Maud—Quarrel about election of bishops—Compromise effected—Defeat of Robert of Belesme—Defeat of Robert of Normandy—The Constitution under Henry I.—Powers of the king: 1. Elected sovereign; 2. Supreme feudal landowner—No constitutional control—The chief ministers—Honorary—Official—The justiciar—The chancellor—The treasurer—The
---

	PAGE
curia regis—Its composition—Its duties—The Court of Exchequer—The curia compared to the High Court of Justice—The magnum concilium, the witenagemot in Norman dress—Changes due to conquest—No real check on the king—Local government—Courts of shire and hundred—The frankpledge—Greatness of Henry I. ... ..	30

## CHAPTER V.

## REFORMS OF HENRY II.

Destruction of Henry II.'s system—Unpopularity of Maud—Unfitness of Stephen for his part—The Conqueror's policy reversed—The Church alienated—Civil wars—Election of Henry II.—Alliance of king, clergy, and people against the nobles—Character and training of Henry II.—Suppression of disorder—Destruction of castles—Curia regis reorganized—Henry's ecclesiastical reforms—The clerical courts—Ecclesiastical and civil courts divided by William the Conqueror—Abuses of this system—Constitutions of Clarendon—Resistance of Becket—Failure of Henry's scheme—Henry's judicial reforms—Assize of Clarendon—The justices-in-eyre—The circuits—The jury system—The grand jury—The petty jury—The civil jury—Committees of the curia regis—Repression of the barons—Strengthening of the local courts—Institution of scutage—Last revolt of the barons—Reorganization of the militia—Meetings of the magnum concilium—Success of Henry II. ... ..	42
--	----

## CHAPTER VI.

## THE GREAT CHARTER, AND RISE OF PARLIAMENT.

Accession of Richard I.—Alliance of nobles, clergy, and people against the king—Character of Richard—The new nobility—Growth of the towns—Gradual separation of the towns from the county government—Grant of charters—Richard's ministers—Rebellion against William Longchamp—Election of John—Character of John—Effects of the loss of Normandy—Growth of national feeling—Quarrel with the Church—Stephen Langton—Charter of Henry I., model of the Great Charter—Signature of Magna Charter—Provisions: 1. The Church; 2. Feudalism; 3. Constitution—The great council—Its composition—Weak points in scheme—General provisions—Carrying out of the charter—The Court of Common Pleas—Character of Henry III.—Rise of Simon de Montfort	
---	--

	PAGE
—Provisions of Oxford—De Montfort's Parliament—Representation—Early instances of, in counties—Election of knights of the shire—Citizens and burgesses—Parliament a development of the witan—Importance of Earl Simon ... ..	55

## CHAPTER VII.

## PARLIAMENT UNDER THE FIRST EDWARDS.

Accession of Edward I.—Resemblance to Henry II.—Struggle with the clergy—Statute of Mortmain—Taxation of Church property—Grants by convocation—Judicial reforms—Model Parliament of 1295—Its members—Its powers: 1. Judicial; 2. Legislative; 3. Financial—Control over taxation secured—Confirmatio Cartarum—De tallagio non concedendo—Importance of Parliament under Edward I.—Character of Edward II.—Rise of favourites—Meaning of word "favourite"—Piers Gaveston—Policy of the younger branch of royal family—The lords ordainers—The Despensers—Deposition of Edward II.—Activity of Parliament under Edward III.—Lords and Commons—Close alliance between the Houses—Aims of Parliament: to control (1) expenditure; (2) appointment of ministers—Concessions of Edward III.—Their repudiation—Unpopularity of Clerical ministers—Administration of John of Gaunt—the Good Parliament—Impeachment of ministers ... ..	68
--	----

## CHAPTER VIII.

## POWERS OF MEDIÆVAL PARLIAMENT AT THEIR HEIGHT.

Apparent strength of Parliament at the accession of Richard II.—Its illusory character—Alliance between the Lords and Commons—Great powers of the nobles, due: 1. To their wealth; 2. Rise of retainers—Attempt of Edward III. to strengthen the royal family—Marriages of Edward III.'s sons—Minority of Richard II.—Appointment of the council—Conflict between the council and the great lords—Fall of the lords appellant—Inability of the Commons to resist the king—Shrewsbury Parliament—Richard's arbitrary rule—Nobles and clergy unite to depose Richard—Lessons of Richard II.'s reign—Constitutional rule of Henry IV.—Ministers controlled by the Parliament—Success of Henry's rule—Triumphs of Henry V. prejudicial to parliamentary government—Minority of Henry VI.—Rise of the Privy Council—Its development from the curia regis—Its members
---

	PAGE
under Richard II.—Encroachments of the council on the powers of Parliament—Proclamations—Decline of parliamentary power—Meetings rarer—Franchise restricted—Decline completed by the fall of the nobility—King freed from control—Other causes of king's power—Strong government wanted—Policy of Edward IV. and Henry VII. ...	80

## CHAPTER IX.

## PARLIAMENT UNDER THE NEW MONARCHY.

Rise of despotism in the fifteenth century—Destruction of feudalism—Demand for better security for life and property—Monarchy strengthened by war—Despotism in France under Louis XI.—Despotism in Spain under Ferdinand and Isabella—Fall of the nobles in England—Absence of a standing army—Constitutional checks on the crown—Practical value of these checks—Powers of the Crown—Appointment of judges—Appointment of ministers—The chancellor—The treasurer—Policy of Edward IV.—Aims of Henry VII.—Impoverishment of the nobles—Abolition of retainers—Establishment of the Court of Star Chamber—Exaction of benevolences—Wealth of the king ... ..	92
---	----

## CHAPTER X.

## PARLIAMENT UNDER HENRY VIII.

Position of Parliament—Character of Henry VIII.—Thomas Wolsey—The Reformation—Wolsey, chancellor and papal legate—Wolsey's home policy—Exactions of the court—Relations between Wolsey and Parliament—Parliament brought into prominence by the Reformation—The Parliament of 1529–1536—Dissolution of the monasteries—Danger of king becoming independent of Parliament—Popularity of Henry VIII.'s measures—Special privileges granted to him by Parliament: 1. Proclamations to have force of law; 2. Right of leaving the crown by will—Importance of Henry VIII.'s reign in parliamentary history—The council under Edward VI.—Its constitution—Rise of the secretaries of state—The Court of Star Chamber—Committees of Star Chamber—Its unconstitutional procedure—The Court of High Commission—Growing strength of the Commons—Shown by creation of rotten boroughs—Causes of the new power—Increased wealth of the country—Influence of the gentry—The Commons a match for the crown ... ..	103
--	-----

## CHAPTER XL

## REVIVAL OF PARLIAMENTARY ACTIVITY.

	PAGE
Absence of rebellion under the Tudors—Character of Queen Elizabeth—Elizabeth and her Parliament—Causes of quarrel: 1. Her marriage; 2. Nomination of an heir; 3. Puritanism—Armada a turning point—Demand for constitutional rights—The monopolies—Importance of securing good-will of Parliament—Theories of Government—Feudal idea of kingship—Personal monarchy—Constitutional monarchy—Change from the Tudors to the Stuarts—Character of James I.—Elements of constitutional freedom—Parliamentary control over: 1. Legislature; 2. Law courts; 3. Finance—Absence of such control under James I.—Influence of the king in the law courts—Irregular meeting of Parliament fatal to constitutional government	114

## CHAPTER XII.

## PARLIAMENT UNDER JAMES I.

The Commons gain: 1. Control over their own elections; 2. Freedom from arrest—Importance of these gains—Other points of variance—Commons declare their privileges in danger—James's violations of the law—Increased customs—Resistance of Bates—Judges decide for James—Issue of the book of rates—Views of the lawyers—Discontent of the Commons—Dissolution of Parliament—James's favourites—Arbitrary acts of the court—The Addled Parliament of 1614—Dismissal of Coke—Unpopularity of the court—Necessity for supplies—Parliament of 1621—Impeachment of Bacon—Freedom of speech demanded—Parliamentary privileges asserted under James I.	126
---	-----

## CHAPTER XIII.

## EARLY PARLIAMENTS OF CHARLES I.

Characters of Charles I. and James I. contrasted—Shortlived popularity of Charles—His marriage—Meeting of his first Parliament—Cautious policy of the Commons—Tonnage and poundage rejected by the king—Illegal collection of customs—Failure of Charles's war policy—Meeting of second Parlia-	
---	--

ment—Chief opponents of the court made sheriffs—Writ withheld from the Earl of Bristol—Laud's Church policy—Threatened impeachment of Buckingham—Dissolution of Parliament—Collection of forced loans and benevolences—Imprisonment of malcontents—Arbitrary government—Meeting of third Parliament—The Petition of Right—Its terms—Murder of Buckingham—Secession of Wentworth—Question at issue between Wentworth and Eliot—Charles's point of view—Dissolution of third Parliament—Death of Sir John Eliot—Resolve of Charles to govern without Parliament—Unsuitableness of the moment chosen ... ..	PAGE 138
--	-------------

## CHAPTER XIV.

## THE REBELLION AND ITS CAUSES.

The advisers of the crown—Wentworth—Laud—Financial reforms of Wentworth—Sources of the king's revenue—His expenses—Extravagance of Henrietta—Necessity for more money—Illegal exactions—From the merchants by tonnage and poundage—From the nobility by the reclamation of the forests—From the gentry, restraint of knighthood—From the commonalty, illegal companies—Ship money collected—The Hampden trial—The Court of Star Chamber—The Court of High Commission—The Short Parliament—Charles and the Church—Lessons from the years 1630-1640—The Long Parliament—Trial of Strafford—The holding of Parliament—The Triennial Act—Arrangements for elections—Opinion of Charles II.—Fall of the Court of Star Chamber—Fall of the Court of High Commission—Appointment of judges—Expulsion of bishops from the House of Lords—The Militia Bill—History of the militia—Outbreak of the war—Execution of Charles I.—The republic established—Abolition of the House of Lords—Election of a Council of State—Expulsion of the members—Barebones Parliament—Cromwell becomes Protector—The Instrument of Government—First Parliament—Cromwell's difficulties—The Petition and Advice—Failure of Cromwell's plan—The Restoration ... ..	149
---	-----

## CHAPTER XV.

## THE RESTORATION PARLIAMENT.

Opening of a new period—Impossibility of return to the old state of things—Question of the day—Was Parliament to control the king's policy?—Power of Parliament—The king's
--



	PAGE
expenses—Revenue settled—Feudal tenures abolished—A standing army—Origin of our present force—Repeal of the Triennial Act—The Corporation Act—The taxation of the clergy—Rise of an opposition—The country party—Charles's position different from that of his father—Appropriation of supplies—Appointment of ministers—Fall of Clarendon—The Cabal—Germs of cabinet government—Its development in the Privy Council—Cabal, the earliest name for a cabinet—Advantages of the plan—Importance of standing armies—Was Charles to increase the army?—Unpopularity of the Cabal—The dispensing power—Late appearance of this grievance—The declaration of indulgence—The Cabal destroyed by the Test Act—Danby—Impossibility of facing the Opposition—Temple's scheme to strengthen the government—Its failure—Was Parliament to control king?—Question still unanswered	169

## CHAPTER XVI.

## FINAL STRUGGLE BETWEEN KING AND PARLIAMENT.

Dissolution of Charles II.'s first Parliament—Habeas Corpus Act—Struggle over the Exclusion Bill—Rise of organized parties—Views of the Whigs and the Tories—Names meaningless—Distribution of the parties—Tories strong in the country—Whigs strong in the towns—Charles's plan of making the towns Tory—Remodelling of the corporations—Excellence of the plan—Benefit reaped by James—Compliance of his first Parliament—Tories alienated by attacks on Church—Union of Whigs and Tories against James—Reasons for necessity of armed intervention—James's army balanced by that of William of Orange—The throne declared vacant—Bill of Rights—Curious absence of new restrictions on king—Cause of this—Real meaning of the revolution—Blow to the Tories—Control of purse made effectual—Supplies appropriated and voted for limited periods—Mutiny Act for one year only—Impartiality of law courts secured—Changes in the working of the Constitution	184
---	-----

## CHAPTER XVII.

## RISE OF PARTY GOVERNMENT.

Policy of government at the mercy of the House of Commons—Cause of this—William's intention to employ all parties—Impossibility of doing this—Party government suggested by
---

	PAGE
Sunderland—Party government adopted by William—Party government becomes the rule under Anne—Crown influence in the Commons—Prevalence of bribery—Places used as bribes—Placemen excluded from the House by Act of Settlement—Danger of this scheme—Repeal of the clause—Need for presence of ministers in the House—The American system—New officers obliged to be re-elected—The Unwritten Constitution—Effect of the characters of Anne, George I., and George II.—Changes in the working of the cabinet—The premier—Corporate character of the ministry—Dissensions between the Lords and Commons—Attempt of the Lords to prevent creation of peers—Did the House of Commons represent the nation ?	199

## CHAPTER XVIII.

## THE INFLUENCE OF THE CROWN.

Great power of the nobility in the eighteenth century—Changes in the seat of political power—Alliance between the Whigs and the merchants—Influence of the nobility—Liberality of their views—Opposition of George III. to party government—Revival of the Tories—George III. educated by Tories—The patriot king—Apparent strength of the Whigs—Their real disunion—Sections of the Whigs—Overthrow of Pitt—Character of George III.—Patronage used against ministers—Fall of Newcastle—Ministry of Bute—Ministry of Grenville—Disunion of the Whigs—Errors of Parliament—Ministries of Rockingham and Grafton—Mistakes of the Court—Ministry of North—Abuse of parliamentary privilege—The remedies : purity and reform—Burke's view—Rockingham's ministry—Reform of the civil list—Coalition of North and Fox—Fox's India Bill—Defeat of the old Whig houses—Success of Pitt—Recent influence of the crown—Dismissal of Lord Melbourne	214
---	-----

## CHAPTER XIX.

## REFORM OF PARLIAMENT.

Anomalies of representation—Influence of the crown in securing efficient Parliaments—Difficulty of getting a Parliament : 1. Counties ; 2. Boroughs—Growing popularity of Parliament—Seats a matter of competition—Efforts of the crown to influence elections—Method of electing knights of the shire—Franchise restricted to the 40s. freeholders—Irregularities
--

	PAGE
in the Borough franchise—Creation of new boroughs—Settlement of the representation—Necessity for a redistribution of seats—Oliver Cromwell's reforms—Return to the old plan at the restoration—Sir Francis Dashwood's suggestion of reform, 1745—Chatham's proposals—Burke's attitude towards reform—The younger Pitt—Postponement of reform—Society of the "Friends of the People"—Buying of seats—A model borough—The six acts—Union of the Whigs and Radicals—The Lords refuse members to Leeds and Manchester—The Tories refuse members to Birmingham—The Duke of Wellington declares against reform—Passing of the great Reform Bill—Its provisions—The franchise made symmetrical—Extension of the franchise in 1867—Possibility of future extension ... ..	231

## CHAPTER XX.

## CONCLUSION.

Changes worked in the Constitution—Anomalies of the Constitution—The sovereign—His functions (1) Passive (2) Active : 1. The embodiment of the nation—Connected with people through the nobility—Secures continuity in government ; 2. Assists to choose statesmen—Knows all negotiations—Queen's letter to Lord Palmerston—The ministry—The cabinet—Ministers, members of Parliament—Contrast with the United States—Merits of the English plan—Harmony between ministry and Parliament—The Opposition—English interest in politics—Dangers of party strife—Qualities of an English minister—Parliament, a reflection of the nation—Ministry, a reflection of Parliament—Purity of English political life ... ..	250
--	-----

## CHAPTER I.

### THE DAWN OF THE ENGLISH CONSTITUTION.

THE most important feature in the English Constitution is its growth. It was not devised by one man, or even by one age; but has grown with the growth of the English nation, changed with its wants, and adapted itself to the needs of various times. And yet, while this change has been in progress, the essence has remained the same. At all times and in all places, the English have claimed the right to govern themselves, to enact their own laws, to levy their own taxes, and to superintend their own law courts. Sometimes these rights have been endangered, but again and again they have been asserted, and at length secured; till the English race may now claim to be, both in fact and in theory, as self-governing as their forefathers were in their old homes by the Elbe. All our chief institutions can be traced from time immemorial. Our sovereigns are the lineal descendants of the caldormen who led the West Saxons to Britain, our courts of justice derive their origin from the assembly of the wise men and the shire-moot, our militia is the fyrd in another dress, our Parliament is the ancient witenagemot. Two institutions alone, the standing army and navy, are excrescences on the ancient constitution; but they have been called into being by the circum-

stance that, mainly due to the strengthening influence of our free institutions, the English have developed from a mere group of petty tribes into the rulers of a world-wide empire.

In the first century after Christ our ancestors dwelt in Germany along the banks of the Elbe. They were one of a number of small German tribes, who lived by pasture and the chase, and who managed to preserve their freedom against the attacks of the Romans. The Germans were well known for their vigour and manly character, and Tacitus, the Roman historian of the time, was so much struck by their virtues that he wrote for his countrymen an account of their manners and institutions. It is from this book that we gather the earliest glimpse of the English Constitution. It was a very simple affair, much like the form of government used by all savage but independent races. The business of the tribe was managed by an assembly, to which gathered the grown up tribesmen. It met under some spreading tree or on the summit of a neighbouring mound. The members came armed, and clashed their spears and shields in approval as they listened to their favourite speakers. This little parliament talked over everything which concerned the tribe; in it treaties were drawn up and alliances made; peace was settled or war declared. Officers too were chosen, ealdormen for peace, *herzogen* or *duces* for war. The ealdormen, whom Tacitus calls *principes* or chiefs, had a good deal of power. When the assembly was not sitting they acted as rulers of their several districts; when it was in session they acted as a committee who prepared business for the assembly, and even decided smaller matters, though the weightier were always settled by the tribe. The ealdormen were chosen because they were good rulers, the *duces*, or army leaders, because they were good generals. They led the army in

war, as the ealdormen ruled the nation in peace. The army was simply the nation in arms, fighting in order of families, for in those days every man of full age was a warrior. Besides electing officers and managing general business, the assembly acted as a law court; in it criminals were tried and disputes settled. Some tribes had kings, chosen from their noble birth, but as it is known that those who came over to Britain had no kings, we may leave them out of account.

This is a picture of the simple government of our ancestors; but they had one institution of great importance which struck Tacitus as different from anything which he had ever seen. This was the *comitatus*, or companionhood, and as it afterwards grew to be an element of feudalism it requires careful notice.

Among the Germans, the service of one man to another was so far from being considered mean, that to be the servant of a great man was thought to give honour. And so, it was the natural ambition of the young men of the tribe to serve the princeps, and the distinction between service and comradeship was so slight that these youths were called indifferently by the name *gesith* (companion) or *thegen* (servant) of the princeps. They looked upon him as their lord or loaf-giver. In peace they served him, in war they fought for him. To be less brave than his thanes was disgraceful for the lord, and athane thought himself shamed if his valour fell short of that of his leader. The old poems of the English tell of the sacred duty of revenging a fallen leader, or the dishonour which fell on him who deserted his lord, and of the glory which was the crown of him who fell by his corpse.

This was the famous relationship of the comes (companion) and the princeps, of thethane (thegen) and the lord. In

token of it the lord gave to the thane a ring, and provided him with a horse and with bread, while the thane gave in return his service, and, if needful, his life. In this way the young men were trained up by their leaders as, in after times, the squire was by his knight. So far the relationship between the lord and the thane was purely between man and man; but it is clear that if the lord were to provide the thane with land, while the thane were to give back fealty and service, we should have what was known at a later time as feudalism.

Tacitus wrote in the beginning of the second century, but little or no change was made in English institutions so long as Germany was their home; but, when the Romans left Britain, the English bade good-bye to Germany, and began the invasion of the island which has since been called by their name.

Of the details of the invasion we know very little, nor do they matter much. We can easily picture the scene in the assembly. Such an ealdorman as Hengist or Cerdic would rise up, and, painting to the imagination of his hearers the fertile land beyond the sea, would cry, "Westward Ho!" and, followed first by his thanes and then by the tribe, would bid farewell for ever to the sandy flats of Germany. Again and again must the scene have been repeated, for at the end of one hundred and fifty years the shores of the Elbe were left almost unpeopled, while the emigrants had wrenched from the Britons all the good soil of the south and east of our island, and forced them to take refuge in the sterile moors of Cornwall and Derbyshire, and the inaccessible mountains of Wales and Strathclyde.

The conquered lands were parcelled out into a number of small districts, such as Sussex, Wiltshire, Essex, and Norfolk, inhabited by men of a single tribe, such as the Wilsætas,

who had probably fought their way over together, and had at last settled down in this particular position. These districts again were subdivided into hundreds, the space which would supply one hundred warriors to the host, or would support one hundred families, small in the fertile east, and larger towards the west, and townships, the settlement of each little community.

The first change effected in the constitution by the migration was the introduction of monarchy. So far as is known no leader of the invasion had the title of king. Hengist and Horsa were called heretogas or duces; Cerdic and Cynric were ealdormen. But the conquest itself changed the title of the leader. He could no longer be a mere ealdorman, he became a king. As the Israelites, when contending with their enemies, demanded to have a king to be their leader, so these little English tribes, in their new field of danger and difficulty, wanted a ruler who could wield the force of the tribe with greater effect than could be done by a leader elected merely from time to time. They wanted a king to deal with kings, a man to whom they could look up as the representative of their race; and who could fill the post better than the leader who had just shown himself a true descendant of Woden? So the ealdorman became the king, and his family the royal family, so that the hereditary character of royalty was at once associated with the "prestige of the successful leader, and the authority of the elected magistrate."

After the conquest came a time of anarchy. There was fighting on every side. Wars were waged not only against the Britons, but against other tribes, and as a result of natural selection the stronger kingdoms absorbed the weaker, and the numerous tribal divisions were consolidated into what is popularly known as the heptarchy.



This process brought with it a change in the method of government. It was impossible that a large kingdom like Wessex or Northumbria could be ruled on exactly the same plan as might do well enough for Sussex, and hence we find that the king of the greater kingdom is a much greater man than the king of the lesser, and that the government of the one is less popular than that of the other. When one kingdom conquered another the smaller became a shire, and though it kept its own assembly, a shire-moot which transacted its special business, matters which related to the whole kingdom were managed by the witenagemot, and the king of the subject kingdom was replaced by an ealdorman. In time, as other kingdoms were conquered, the new kingdom became a collection of shires, each having its own shire-moot and ealdorman. In each of the shire-moots the interests of the king were looked after by the shirereeve or sheriff. Below the shire the hundred had its hundredman and hundred-moot, and the township its reeve and town-moot. This was the system of government which was used in the great kingdoms of the heptarchy, and the only trace of national union is found after the introduction of Christianity in the Church Councils, where the clergy of England met together, without reference to the kingdoms to which they belonged. It was this union as Christians which gave to the English the first notion of a political union, and its first expression was in the recognition of the office of the Bretwalda, or wide ruler, which was never held by an heathen monarch.

The central institution is the witenagemot. Its relation with the king on one side, with the people on the other, marks the exact nature of the English monarchy. The witenagemot, or meeting of the wise men, was a limited assembly. It was not a folk-moot. That belonged to the

shire, and was the same as the assembly of Tacitus: the witan was the committee of the principes. It has been argued that the witan was a degenerate form of the folk-moot, which, in theory, included every freeman, but which in practice was attended only by a few. On the other hand, an appeal may be made to the name, which suggests its analogy to the *boulé* of Homer, and to the fact that the shire which had absorbed the others had itself a shire-moot. The folk-moot, then, was left to the shire; the witan gathered round the king. The witan was never a large body. As far as can be ascertained, in no kingdom did it number more than, at the outside, one hundred members, and often as few as thirty; and though on some great occasions there were larger meetings, they do not seem to have been strictly constitutional.

The following members were present: (1) the king, and, on great occasions, his wife and family; (2) the ealdormen; (3) the bishops, who took the place of the priests mentioned by Tacitus; (4) the king's thegens. These thanes were the successors of the old thanes of the ealdormen; but when the ealdorman in Germany became a king in the new island, his thanes rose with him, became themselves nobles, and rapidly acquired a distinction which overshadowed that of the old eorls who, from some nobility in their birth, were looked on as the superiors of the eorls or simple freemen, a distinction which after all does not seem to have amounted to much more than that of gentle and simple.

The powers of the witan were very great.

I. They elected the king. Their choice, however, was governed by several well-known rules. The new king had always to be a member of the royal family, and it was understood that, except in the case of incapacity from age or absolute unfitness of character, the man who was nearest in blood to the late king should be chosen as his successor.

When the choice had been made, it was submitted to the people, on whose recognition the ceremony was completed by coronation.

II. As the witan elected, so it also deposed the king. Nor was this right one of name only, for the witan of Northumberland deposed Alcred, and that of Wessex Sigebert.

III. With the assistance of the king, the witan made or rather stated the laws. Legislation in those days was not very heavy. It confined itself to ascertaining the best customs then in use, or at most aimed at republishing these in the shape of a code.

IV. The witan acted as a court of justice both in criminal and civil cases. For instance, the witan of Northumberland tried Archbishop Wilfrid and expelled him from his see. It also tried causes between powerful persons, whose cases could hardly have been dealt with by the simple machinery of the shire-moot.

V. In great questions of state we find the witan consulted, as for instance, when it was proposed by Ethelbert to accept Christianity.

VI. With the king, it appointed the chief officers of the realm, the ealdormen and the bishops.

VII. The witan reserved the right of sanctioning the king's grants of the folkland. This was undivided property belonging to the state, which was constantly being granted to private individuals who held it by a charter or book, and it was, for that reason, known as bocland.

At the head of the whole state stands the king. The name is connected with *cyning* or *cyn*, our word *kin*, and has nothing to do with being a cunning man. The king is the hereditary officer of the realm. His seat is the throne, and he bears the insignia of royalty. On his election he is

anointed and crowned. An oath is taken to him, and, if he is murdered, not only is a very large wergild or blood fine paid to his family, but a cynbot, or amends for a king, is due to the nation. In addition to his private estates a large revenue is secured to him. The demesne of the crown with its palaces—not that a palace was a very splendid place in those days—belongs to him. He has rights over the folkland, and as he travels through the country his support is provided by the owners of bocland. To him goes a share of the fines levied in the law courts. Wrecks and treasure-trove are his. Mines and salt-works belong to him, and heriots or army gear (in theory, the arms of the deceased warrior), are paid to him on the death of any of his thanes, by the heir. It is to look after these rights that the king appoints a sheriff in each shire. But there was one right which was perhaps dearer than all the others, a right which marked him out as a successor of the old dux, who had led the emigration. To the king belonged the supreme command in war.

These were the ancient rights of the king and the witan, and from them the prerogatives of the present Sovereign and her house of Parliament can be traced.

## CHAPTER II.

### ENGLISH KINGSHIP BEFORE THE CONQUEST, AND RISE OF FEUDALISM.

THE name Heptarchy denotes a period, not a system of government. At no time were there seven regular kingdoms in England ; the number constantly varied. Nor were these kingdoms united together by any real constitutional tie ; they did not form a confederation, and the only trace of union is to be found in the name Bretwalda, or wide ruler, which was given to the Christian king who happened at the time to be pre-eminent. During the heptarchy a never-ceasing struggle was going on between the kingdoms. At first Kent took the lead. This was natural, for Kent had been settled longest, had no fighting with the Britons, and quickly gained a smattering of civilization from the continent. Kent, however, never seems to have established a recognized supremacy over its rivals ; the first to do this was Northumbria. This great Anglian kingdom, well protected by the Humber and the North Sea, the Forth and the Pennine range, rapidly became powerful ; and when it had beaten the Scots at Dagestan, and the Welsh at Chester, it was far stronger than the others, and in 617, Edwin, its king, subdued all England except Kent. The supremacy of Northumbria lasted till 685, when the crushing defeat of

Nectansmere was suffered at the hands of the northern Celts. A period of disorder followed. Then Mercia, under Offa, its king, came to the front, defeated the men of Kent and Wessex, vigorously encroached upon the Welsh, established an Archbishopric of its own at Lichfield, and kept the foremost place till the death of Offa, in 796. Anarchy ensued, but in 825, Egbert, king of the West Saxons, beat the Mercians at Ellandun, and within two years every one of the kingdoms of Kent, Sussex, Essex, East Anglia and Northumbria had submitted, and received him as the first overlord of the whole English race.

The supremacy of Wessex, however, rested upon no more stable foundations than that of Mercia or Northumbria, and in all probability the dreary round of civil war would have begun again, had not the subject kingdoms been ruined by the invasions of the Danes.

About the end of the eighth century these pirates of the north began to ravage the coast of England. The population of Scandinavia was always pressing closely upon the scanty means of subsistence afforded by its barren soil, and, preferring danger abroad to famine at home, its hardy sons, led by their jarls or sea-kings, launched out into the deep, and wandered forth to conquer England, Normandy, Russia, Sicily, and Naples, and to menace Constantinople, on the one hand from the Black Sea, on the other from the shores of Macedonia. Their invasions of England divide themselves into three periods. First they came to pillage, second to settle, and thirdly, led by their kings, to conquer. Before them the under-kingdoms of Wessex fell fast, but when, in 871, the Northmen invaded Wessex itself, they met with a stout resistance, and at length, after many changes of fortune, made with King Alfred the peace of Chippenham, or Wedmore, by which they agreed to leave Wessex to itself, and

to accept as their portion of the island that part which lay north of the Thames and to the east and north of Watling Street, which ran from London to Chester very much along the line of the London North Western Railway. Alfred himself attempted nothing more than to check further incursions; but his son, Edward the Elder, attacked them in their settlements, and conquered back all the country of the Danes as far as the Forth. So great was his fame that the Welsh of Cornwall, Wales, and Strathclyde, and also the Scots of the country north of the Forth submitted to him, and agreed to receive him as father and lord; so that Edward was not only king of all the English speaking race, but was overlord of the whole island. This supremacy was maintained by his descendants, and it was not till long afterwards that the notion of the possibility of Scotland being an independent kingdom arose.

The difficulty, however, of ruling so large a kingdom was great. Communication was difficult, and news travelled very slowly, and it was out of the question for the king to keep his eye on everything by travelling about as he had done when his kingdom was smaller. Under these circumstances Edgar and Dunstan hit upon a new plan. They divided the kingdom into earldoms, founded something upon the lines of the old kingdoms. In these the earl had an almost regal authority, while the king was paramount over the whole, and besides kept in his own hands the mother earldom of Wessex. This plan had many disadvantages. Though it made government easier in peaceful times, it kept alive the old feeling of disunion; and when, under Ethelred, the kingdom was again attacked by the Danes, "no shire would help other," and Ethelred the Unready was not the man to overcome this feeling by the spell of his personal ascendancy, so the kingdom was conquered in detail, and fell under

a Danish dynasty. Canute kept up the system of Dunstan. Indeed, as he was king of Norway and Denmark as well as of England, he had still greater difficulty than Edgar in keeping a grasp on the outlying districts; he even gave up the earldom of Wessex to Godwin, and from this time forward we find the earls the real rulers of the land. They quarrelled or combined among themselves, took up one policy or another, and left to weak kings like Harthacnut or Edward the Confessor no choice but to act as mediators between them, a state of things which prepared the way for the Norman Conquest.

While these changes were taking place the monarchy too was changing. Between Egbert and Edgar the power of the king grew, between Edgar and the Confessor it declined.

As the size of the kingdom increased, so did the power and importance of the king. The monarch of the whole English race was in the eyes of his subjects a much greater man than the king of a petty province like Wessex or Northumbria. The feeling of loyalty was stirred by the early struggles with the Danes, and gathered round Alfred and his successors as the saviours of their country. As France in the fifteenth century was first really united under the house of Valois by her struggles with the English; so England in the tenth century was united by her struggles with the Northmen. The kings, too, were men of exceptional vigour, and worthy of their title. They were men of whom the country might well be proud, and they might even aspire to a higher title than king, and after the submission of the Welsh and Scots, a sovereign who ruled supreme within the four seas had some claim to rank as an emperor.

Other causes added to the majesty of the king. He was the head of the law. The security of life and property was



under his care, and all crimes of violence were looked upon as breaches of the public peace, of which the king was guardian. All over the country his influence was felt, and it became his practice to call up cases from the shire-moots to be tried before the king and the witan. The public land came more and more under his control, and finally grants were made from it without asking the leave of the witan. The old gentry, the eorls, were completely eclipsed by the king's thanes, who increasing in importance with the king, became more and more powerful members of the witan, and represented the king's authority through the length and breadth of the land.

The highest possible power under the old English system was reached by Edgar. He was the real leader of his people; he originated his own policy, and carried the people with him; the fleet was under his charge; he granted estates out of the folkland by his own authority, and he called up suits from the shire-moot into his own court. Then came the decline, and it was due to the growth of what was to all practical purposes feudalism.

It is, or was, currently believed that feudalism was brought into England by William the Conqueror. This is a mistake. Though first identified as feudalism at the Conquest, the system had really been springing up and growing for a long time, and its roots may be found in the English institutions ages before William the Norman set foot in the island.

Mediaeval France gives us a good picture of a feudal kingdom. There we see a king surrounded by his great dukes, who rule very large tracts of country, such as Brittany or Normandy. Among these princes the king is simply "primus inter pares," the first among his equals, though they have sworn to him the oath of fealty. Below these are the counts holding their lands from the dukes by the same

tie of fealty ; then came the lesser landowners, and finally the villeins and serfs. The whole forms a huge pyramid, whose apex is the king, whose base is the serf. Four ties bind each class to that above it. First, mutual protection and support. The lord protects his vassal, the vassal fights for the lord, even against the king himself, and to do so is thought no treason. Secondly, if the lord is called upon to fight, his vassal is bound to follow him to war, and to provide for himself arms and food. Thirdly, the vassals are suitors at the lord's court. He presides over the court in person or by his deputy, but the vassals are bound to attend and all cases either of crime or dispute are tried in it by the vassals themselves. Fourthly, the outward sign of all this is the holding of land, which goes back to the lord on the death of the vassal, and is only received back by the new holder on payment of a sum of money (*relevium*) for taking it up again. Each duke or count is completely independent of any other. He has no dealings with equals, only with superiors or inferiors ; within his own bounds he is monarch of all he surveys. In such a State the power of the king must decrease before the power of the great feudal nobles. They have everything on their side, residence on the spot, military power, personal loyalty, and it is only by great acuteness and ingenuity that the monarch can hold his own at all. "In this system," says Mr. Stubbs, "the royal power is reduced to a shadow. The shadow is still the centre round which the complex system in spite of itself revolves ; it is recognized by that system as its solitary safeguard against disruption and its witness of national identity."

This is the feudal system, and it had been developed in England before the Conquest in some of its very worst features. The whole change is typified by the change from a personal to a territorial organization. In old times the

State was a collection of free men, each of whom owned land because he was free. In the new, the State is a territory, and free men are free because they own land.

We have seen how in the earliest times there existed in the comitatus a system by which the great men were connected with the less by a tie of mutual assistance and protection, which is one of the four sides of feudalism. And we have seen in the practice of whole nations choosing the sovereign of another as father and lord, a still further development of the system of personal fealty. Again, it had been ordered by Alfred that the landless man must have a lord, and during the invasions of the Danes numbers of the smaller landowners had been forced to put themselves under the protection of the great men of their neighbourhood.

This brought in another side. For the lesser landowners, when they put themselves under the protection of the great, surrendered their lands and received them back to be held as under vassals. Moreover, it had long been the practice for the king to grant land to be held from him by his thanes, and in the same way the earls sublet land to their thanes; so, both from above and below, the practice of holding land from a superior and ultimately from the king was making rapid progress.

In the next place, the courts of law were coming under the control of the great landowners. The court of the township became the court of the man to whom the township belonged. In the case of land granted out of the folkland, the rights of *sac* and *soc*, which practically meant jurisdiction in civil and criminal cases, were constantly granted; and in the time of Canute, we are told that certain magnates called *landrica* had jurisdiction over the smaller landowners.

There was also military service. The thanes were expected to fight for their lords as in times past. But, besides

this ordinary practice, Cumberland was let out by Edmund, to Malcolm, King of Scots, to be held on military tenure.

Thus we see that before the Conquest there existed in England all the essential elements of feudalism. But on the Continent the worst feature of feudalism was the power of the dukes. This we have in England. Canute's earldoms were more thoroughly in keeping with the practice of the Continent than anything which is to be found after the Conquest. That of Mercia was a vast territory where the earl, an old Mercian noble, united in his own person the power of the great landowner and the official dignity of the ealdorman. Against him the shirereeves and the bishops had little power. Practically he was an independent prince. It is impossible to exaggerate the evil effects of this system on the history of the eleventh century. Its certain tendency is to become hereditary, and independence must follow unless the system is overthrown. The great dukes of France and Germany were in the beginning the exact counterparts of the earls of Edgar. Similar causes would have doubtless produced similar results; the history of the earls of Northumberland might have been the same as that of the dukes of Bavaria, had not the natural growth of feudalism been happily arrested by the Norman Conquest, and it is due to William the Conqueror that the feudalism of England did not lead us into the miseries which followed its growth in Germany, in France, and in Scotland.

## CHAPTER III.

### REFORMS OF WILLIAM THE CONQUEROR.

THE weakness of the old English system of government was thoroughly shown during the reign of Edward the Confessor. Struggles between the great earls fill up the story. The family of Godwin in Wessex and Northumbria, the family of Leofric in Mercia, strove with each other for supremacy, and Edward himself played between them the pitiful part of mediator. Such was the condition of things to which the policy of Edgar and Dunstan had brought the great kingdom of Edward the Elder. The king himself was only half a representative of the English race. The son of Ethelred the Unready and the Norman Emma, educated in Normandy, speaking French better than English, disliking the rude manners of his countrymen, it was little wonder that Edward surrounded himself with a train of Normans. Foreigners filled the court; they held high office in Church and State; riches were heaped upon them, and the English found themselves despised in their own country. In this state of things a national party was formed. At its head was the family of Godwin, with whom the Confessor was connected by marriage, and a vigorous struggle was made. For a time, the patriots were worsted and had to leave the country; soon, however, they returned, and the Frenchmen fled to their own land.

The mischief, however, had been done. Not only had the Normans spied out the nakedness of the land; but their duke, while on a visit to his cousin, had received from him a promise which could be construed as giving the right of succession.

Nor were the Normans averse to moving. Theirs had been for a long time a life of emigration. Since Rollo of the North had led his followers to Normandy, many of their warriors had gone out as conquerors. In Sicily and Naples their countrymen were even then winning for themselves kingdoms. The conquest of England offered a glorious prospect for William. To be the vassal of the French king was not a very satisfactory position for a man of his energy, and he burned to raise himself to independence. The Duke of Normandy was one of the eight dukes and counts who chose Hugh Capet, king of the French, in 987. He formed part of the feudal hierarchy of France; above him stood the king, beside him the dukes, and below him his counts and barons. He managed his duchy as a conquered kingdom. His policy was the result of consultation with his great men, but for the maintenance of his power he had to look in the main to himself. Little recked his barons for the ducal authority unless it was backed by an iron hand; at a moment's notice they were ready to fight their duke or to leave their country. Men of restless energy, they cared not for local institutions, but for schemes of high policy; and wherever they settled, they carried with them these same characteristics. It was among men like these that William had got his training. As a mere lad he had had to fight for his power; step by step he had won his way, shown himself the better man, and now with a tight grip of the saddle, he held the reins with a firm hand, knew his own mind, and enforced his strong will throughout his duchy. It was just

this firm central authority that was wanted to brace the excellent local institutions of early England, and to break down the growing feudalism which was rapidly bringing her to anarchy.

Of the details of the Conquest it is needless to speak. The crisis was brought about by the death of Edward. When he was gone and no one of the old English line remained but the lad Edgar Atheling, the witan, well knowing the dangers of the time, took as his successor, Harold, head of the house of Godwin.

The accession of Harold roused William to action. To be deprived of his hope of the accession was bad, but to be ousted by Harold, the representative of the English house which had been most deadly in its hostility to the Normans, was more than he could bear. Besides, he had a personal grudge against Harold, who had sworn to him as his man, and though such an oath could not affect the decision of the English witan, it was easy to call the choice a breach of faith. Nor were other excuses wanting. England had never been very submissive to the Pope; it was not difficult to get his sanction for the enterprise. At that moment her Primate, Stigand, was in schism, for he had received his pallium from the Antipope, and Harold himself had had to be crowned by the Archbishop of York. Out of these materials it was not difficult to put together a very plausible collection of pretexts for an invasion; nor was it very hard to get the Normans to join, and at William's call a large army, made up of Normans, Bretons (the representatives of the old Celts), and a motley crew of adventurers from all parts of Europe gathered under his banner.

Against these forces Harold made a brave resistance; but luck was against him. He had to deal with his brother Tostig, the expelled Earl of Northumbria, and his ally,

Harold Hardrada of Norway, as well as with Duke William. The old disunion broke out afresh. Though Harold had helped Edwin and Morcar, of the family of Mercia, against Tostig, they refused to help him against William. Harold, moreover, fought on too advanced a position; but in spite of all he was within an ace of victory, and only yielded to death and defeat after a resistance so splendid that few Englishmen read the account of the battle without feeling as if they too were fighting for their country.

The victory of Hastings only gave William command of Wessex; but he soon extended his power. Marching to Berkhamstead on the great road from London to the north and west, he cut off that city from the rest of the island. Isolated thus, it was soon forced to capitulate. The witan reconsidered their decision to elect young Edgar king; chose William instead; and the new king was duly crowned on Christmas Day by the Archbishop of York.

William had now got exactly the position he wanted. He was not merely a Norman duke who had conquered England in fight, but he was its elected king, chosen in due form by the witan, crowned by an English bishop. Had it been otherwise, he would have been merely a conqueror, pledged to reward his Norman followers with the spoils of the conquered race. Now he held exactly the same position as Canute, or Edward the Confessor, or Harold: he was king, not only of the Normans, but of the English. It is difficult to overestimate the importance of this success. By it the continuity of English history was secured, and the changes which followed the conquest became modifications of the old constitution instead of the introduction of a new one. Armed with this authority as king of the English, William sternly put down all attempts at rebellion. The struggle was fierce and protracted; but the English were disunited,



without natural chiefs, for Edwin and Morcar remained passive spectators of the struggle till it was too late, and no great leader appeared who could match himself against the Normans. In five years resistance was at an end. William was then able to turn to the task of consolidating his new power.

First of all he asserted his right to all the prerogatives of his predecessors, exacted homage from the King of Scots, and denied the claim of Gregory VII. for fealty, on the ground that his predecessors had never paid homage to former Popes. He then applied himself to internal affairs. The position was one of great difficulty. On the one hand, William was determined to rule as king of the English and not of the Normans, on the other hand, it was absolutely necessary to reward his followers, and at the same time to do it in such a manner as not to put in jeopardy his own power. The Normans naturally expected that William would set up in England the feudal system as it was to be seen in France; but that was precisely what William was determined not to do. He had been Duke of Normandy before he was King of England, and he knew very well what that would mean; and, while he retained the form of feudalism, he determined to rob it of its spirit.

William the Conqueror was one of the most practical men who ever lived. He did not aim at remodelling the government according to any theory; but he had a thorough knowledge of the difficulties he had to face, saw perfectly well what should be done, and had strength and resolution to do it.

His first step was of great importance. He insisted that he had been rightful king since the death of Edward, and therefore that those who fought against him at the battle of Hastings were traitors, and that those who had not come to fight for him were guilty of the crime of non-attendance at

the fyrd or assembly of the militia. By this reasoning, every landowner in the country was brought under his power. The traitors forfeited their lands; the rest were forced to pay fyrdwite, the fine for absence from the fyrd; but this might be construed as the payment of a relief, the sum due from the vassal on accession to his estate, that is, as an acknowledgment of William's feudal superiority over the whole kingdom. This was a great point gained. William was now feudal lord of the land. He held in his own hands the folk-land which now came to be called the forest, and he also had a mass of forfeited property, which was further augmented after every abortive rebellion, with which to reward his followers.

This he did with great caution. On the Continent the duchies, in which the dukes reigned almost as independent sovereigns, were the great danger of the crown. William knew well what his relations had been with the King of France, and he was determined to have no vassals of that stamp in England. Accordingly he began by abolishing the great earldoms of Mercia, Wessex, Northumbria and East Anglia, and they never appeared again. When they were gone the shire again became the unit of government; the sheriff became in most cases the next officer under the king. Three exceptions, however, he made. Durham, Cheshire and Kent were what are called counties palatine. Each of them had an earl who held the whole county from the king, and all the landowners of the county held from the earl, and in these, then, the earl had the same position as a French duke. But these earldoms were retained for special purposes. Cheshire guarded the Welsh border, Durham the Scottish, and Kent was the county most liable to assault from the Continent; in them, therefore, it was desirable that there should be a strong commander on

the spot. It was thought that the Welsh would afford enough business to employ the Earl of Chester, so that county was granted to a layman, Hugh the Wolf; but Durham and Kent were given to ecclesiastics who could not found families, so there was no danger of their becoming hereditary. Durham and Cheshire remain county palatines to the present day; but nothing more was heard of the county palatine of Kent after the deprivation of its first earl Odo of Bayeux. In giving away the other lands at his disposal, William took care that the grants should not lie together, but should be scattered over the country. For instance, Odo of Bayeux had property in seventeen different counties, which utterly crippled his military power, and the estates of other noblemen were equally divided. Fourteen hundred manors were kept by William in his own hands, and most of the towns and fortresses. This was most important. Abroad the feudal nobles built castles where and when they pleased; every crag was seized upon, and became a terror to the neighbourhood, a menace to the king. But William would have none of this in England; all existing fortresses were taken into the king's hands, and placed under the charge of officers appointed by him, and no noble was allowed on any pretence to build a fortress—a prohibition, however, which taxed all the energy of William and his sons to enforce.

From this splitting up of estates other results followed. Abroad each duchy had its own peculiar set of laws, and its own customs duties. In England there was one law for the whole country; no county presumed to levy taxes on goods going in or out, and the country therefore enjoyed the benefits of free trade. Again, on the Continent, the judicial system was almost entirely in the hands of the feudal lords. But in England this was never the case. Except in the counties palatine, few lords held enough pro-

perty to enclose a whole hundred, much less a county, and therefore his vassals had usually to settle their disputes with other vassals at the hundred or county court. These courts were protected by William and his sons. They formed the great check on the nobility, who struggled hard to get exemption for themselves and their vassals, but were finally beaten by Henry II., when the assize of Clarendon ordered that no franchise was to be free from the visitation of the sheriff.

Another result was the breakdown of the military side of feudalism. Abroad, where the lords held large tracts of territory, it was easy enough for them to assemble their vassals; but it was a different matter when their estates were scattered about in various counties. As a means of collecting soldiers military service was little used; the kings preferred to rely upon the old English fyrd or militia, while the barons found it impossible to collect their outlying tenants to fight against the king. The fyrd was employed regularly both by William and his sons; for long campaigns they hired mercenaries, but they rarely called for the services of their feudal tenants.

But this was not the only check placed upon them. On the Continent the vassal swore fealty to his immediate lord, and not to the king; thus Joinville, the friend of St. Louis of France, refused to do fealty to him because he was the man of the Count of Champagne. The effect of this was that if the tenant followed his lord against the king, he was only doing what was right. William put a stop to this by insisting on every landowner, whosoever vassal he might be, taking an oath of allegiance to himself, and thus completely broke the neck of the feudal system.

These modifications of feudalism were of the utmost importance, and were due directly to the policy of William.

But there are other points in which the nobles of England differed from those of the Continent, which are of hardly minor importance.

The great curse of Europe was private war. It was a check to all progress ; district after district was ravaged by it ; and the Church was thought to have done a great service when it succeeded in stopping it on every day in the week except Monday, Tuesday, and Wednesday. In England, with one great exception—the reign of Stephen—we have never had at any time much private war. Traced to its source, private war was due to two causes—first, the great military power of the nobles ; secondly, the absence of superior courts where they could settle their quarrels. In England these difficulties did not exist. As we have seen, the military power of the nobles was kept under due control, and, moreover, the existence of the hundred court, the shire-moot, and the king's court, afforded to every one, from the highest to the lowest, a chance of settling their disputes without recourse to arms ; and, above all, in England the king's peace was proclaimed, and any violation of it brought down the vengeance of the crown.

Again, on the Continent, the nobles and clergy were for the most part exempt from taxation. This was never the case in England, though the clergy made a vigorous attempt to gain it. Moreover, in England, as a man was a noble because he held an office, the rank did not descend to all his children ; so we have not in England a swarm of starving nobility ; and, on the other hand, there is no bar between the nobility and the rest of the nation, for the children of the nobles are commoners, and any commoner may hope to become a noble.

William also dealt with the clergy. This order was growing into immense importance, and his legislation with regard

to them had lasting results. Before the Conquest there had been no legal difference between the clergy and the laity, the bishop and ealdorman had sat together as presidents of the shire-moot, in which both laity and clergy were tried. William altered this. At his accession the bishops were strongly English, and he was therefore anxious to reduce their power; and he wanted, moreover, now that the earls were mostly gone, to prevent the new Norman bishops from interfering with his sheriffs in the administration of the counties; so he removed the bishops from the county court, and gave them a court of their own to try ecclesiastical offenders, a change which at no distant time was attended with very bad results. In other respects he held a tight hold over them, and published four ordinances which formed the basis of the relation between Church and State till the Reformation. They were these. He had had an opportunity of seeing what difficulties had occurred through disputed elections to the papacy, and he determined that England should never be distracted on that score. He, therefore, decreed *that no Pope should be acknowledged nor Papal legate nor letters be received in England without his leave*. Great troubles had been caused by the meeting of ecclesiastical synods, and the enacting of canons contrary to the wishes of sovereigns, so he laid down *that no synod should be called or enact anything without his leave*. And, lastly, he determined to take out of the papal hands the great weapon of excommunication, so he ordered *that without his leave no baron or servant of his should be excommunicated*.

To complete the whole, William determined to know exactly how the land of his kingdom was divided between himself, his laity, and his clergy; and for that purpose he sent round a commission to every county. First they went to the county court: there they ascertained from the mag-

nates the general divisions of the county; then to the hundred, where they entered into more detail; and, finally, to each parish, where they learnt from the reeve, six villeins, and the parish priest, the exact condition of the land, who owned it now, and who had owned it in the days of the Confessor; its condition now, and its condition then in every respect, and in what manner its condition might be improved. The results were embodied in Domesday-book.

These measures of William were not carried out all at once; their introduction was gradual, and it must not be supposed that they were popular. By no means. Directly the Normans learnt the conditions under which William expected them to live, some departed and some rebelled. The first rebellion took place in 1074, and it showed exactly at what the Normans were aiming. The conspirators were Ralf Guader of Hereford, Rogery Breteuil, and Waltheof, the son of Earl Siward, though the last had really little to do with the actual outbreak. Their notion was to depose William, and then one of the three was to be king, and the other two earls,—doubtless after the continental fashion. But William put them down. His allies were the clergy and the English, who marched with alacrity against the nobles, whom they had already begun to recognize as their foes. The rebellion was crushed, and punishment followed; but it was only the first of a series. For one hundred years the struggle between the king and the barons went on: its first outbreak was in 1074, its last in 1174; and the barons were only finally suppressed by the union of the king, the churchmen, the towns and the people against the danger which threatened the foundations of government and society.

For the result of this struggle we have to thank William the Conqueror. Had he been one jot weaker, our history might have been that of France. He had had to settle the

immediate difficulties of the Conquest, and he had done it well. His measures were of lasting benefit to the country ; but he had hardly had time to develop the more elaborate system of government which was required for so large a state, and it was well for England that in his sons there were found two men of great ability, one of whom held the nobility in check during a most critical time, and the other developed central institutions, which gave a keystone to the old English system of local self-government.



## CHAPTER IV.

### ENGLISH CONSTITUTION UNDER THE NORMAN KINGS.

THE system of William the Conqueror was carried on by his sons. The policy of these three sovereigns was really continuous; each was affected by the times in which he lived, by his own character, by that of the men with whom he had to deal, but in the main they pursued the same track with the same object in view, to check the nobles and to centralize the government. For this reason the Norman system was not fully developed till the reign of Henry I., and it required two generations to bring to perfection the system of government founded on a union between the practice of Normandy and the constitution of England.

William the Conqueror died at Rouen in 1087. On his death-bed he gave to his son William a letter to Archbishop Lanfranc, recommending him as king. He could do no more than this, for the right of the witan to elect had not yet been impaired. Accordingly a council of prelates and barons was summoned, and to them William was proposed. His election was secured by the influence of Lanfranc, and by the support of his father's old friends, the Beaumonts. On his election, William began a practice which was followed by several of his successors: he granted a charter, or rather made a promise to Lanfranc, that he would in everything

observe justice, fairness, and mercy, and that he would defend the Church, and on this promise he was crowned. William, therefore, held the throne on exactly the same terms as his father—not as a conqueror or successor by right, but solely as an elected monarch who had promised good government in return for his election.

Like his father, William soon found it necessary to rely on the English; for the barons, under Odo of Bayeux, and Robert, Count of Mortain, rebelled and seized Rochester. But William called together the trusty and valiant Englishmen, promised them good laws, lower taxes, and free hunting, and, declaring that any one who did not follow would be branded with the name of *nothing*, led them against the barons and put down the rebellion. During the remainder of the reign the barons were chiefly occupied in the disputes for the crown between William and Robert, which had little bearing on the English constitution, until the call to the Crusades happily relieved the country of the more adventurous of their number. The other important event in the reign was the quarrel between William and Anselm, the successor of Lanfranc. The quarrel, however, was a purely personal one, for the arrangements of William the Conqueror had settled for the present the relation between Church and State.

Though no very striking events mark the reign of William Rufus, its thirteen years were of first-rate importance. William, though a thoroughly bad man, was in many ways a good king. It is true that in his time the English were subject to great oppression from the barons; on the other hand, the barons felt most strongly the hand of the king. Under him they made no progress at all towards the continental idea of feudalism. They were checked on every side, not only by the king's reliance on the English, but by

the determined rule which he and his minister Ranulf Flambard maintained. The regulations of William the Conqueror were thoroughly enforced; castles were kept in the king's hands, and feudal dues were exacted with a severity unknown on the Continent, a plan which made the king rich, while it kept the barons poor. It was a stern and cruel time, but on the whole the nation was a gainer by the reign.

It was fortunate that William had no direct heir to succeed him. Another disputed election secured another royal act of submission to the laws of the kingdom. Henry I. was indeed, unanimously elected by the witan which, as the chronicle says, happened to be present; but the existence of his brother Robert forced him to do all he could to conciliate his new subjects. Accordingly he began his reign by three popular acts. He shut up Ranulf Flambard in prison; he married Maud, the daughter of the King of Scotland, and niece of Edgar Atheling; and he granted a charter.

This charter gives us a picture of the chief grievances of the different classes, and is a most important contribution to the history of the time. It states :

I. That Henry was crowned king by the common counsel of the men of the whole realm of England.

II. That no exactions are to take place between the death of one clergyman and the appointment of his successor.

III. That the barons are to redeem their lands by a legal and just relief; and that the right of wardship and marriage is not to be harshly used.

IV. That the barons are to act with equal fairness to their men.

V. That wills bequeathing personal property may be made; and that fines are not to be ruinous.

VI. That the laws of King Edward are to be restored.

These provisions then distinctly assert that the king is an

elected monarch. They do away with the great grievance of the Church, the keeping of livings and bishoprics vacant, while the king enjoyed their revenues. They make a first step towards fixing the feudal dues, and securing the right of transmitting personal property by will. The barons are to do to their men as they would the king should do to them ; and, finally, the standard of government is to be the system of Edward the Confessor, *i.e.* the kingdom was to be ruled according to English, not Norman, ideas.

By putting Ranulf Flambard in prison Henry attempted to conciliate the barons, who hated men of low birth but quick wit ; and by marrying Maud he not only conciliated the English, but he also hoped to secure for his successors the prestige of being the lineal descendants not only of William the Norman, but also of Cerdic and Cynric. Anselm was then recalled, and in the letter which was sent him, Henry distinctly stated his position, for he called himself, "*Ego nutu dei, a cleris et a populo angliae electus.*"

On Anselm's return, Henry and he quarrelled on the subject of investitures. The question involved the relation of the crown to the clergy. It was well worth a struggle, because not only did the clergy hold a great part of the best cultivated land in England, but also, on the Continent, they were making a hard struggle to become independent of lay government altogether, by getting the elections of their bishops into their own hands, and by refusing to do homage for their estates. Abroad it cost much bloodshed, but in England it was peaceably settled by the mutual good sense of Henry and Anselm. The result was a compromise. Hitherto bishops had been elected by the witan, or, as it was called after the Conquest, the King's Court, and the king had presented them with a ring and crozier. This the Church resented, because it gave the idea that it was the

king's gift, and not the consecration, which made the bishop. The king, therefore, gave up this empty ceremony on the important concession, on the part of Anselm, that no one who had been elected should be refused consecration on the ground that he had done homage for his land to the king,—precisely what Henry wanted to secure.

Like William Rufus, Henry had soon to deal with a quarrel with the nobles. At their head was Robert of Belesme, powerful alike in England and in Normandy; but Henry, like William, appealed to the English; Robert was driven into exile, and all England rejoiced, because as they said, "Henry had now become a free king."

A few years later Henry vanquished his brother Robert on the field of Tenchebrai and put him in prison, and from that time forward was able to give his attention to the administration of the kingdom, and to securing the throne for his successor. The last is a point of importance, for Henry made a distinct attempt to get his heir recognized before his own death. It was an imitation of the French plan, by which the eldest son of the king was crowned before the death of his father, a plan which avoided all chance of an interregnum, and enabled each king to step at once into the position which his father had won, and as for many generations the French kings always had a son of full age to succeed them, a great deal of the steady growth in power of those monarchs may be traced to the practice.

It is now time to turn to the administration of government. William the Conqueror had had plenty to do in organizing his new kingdom; William Rufus was a soldier and not a statesman; but Henry I. was a born administrator, and it is under him that the Norman ideal reached perfection, and it is then that we may best examine the system and compare it with that which existed before the Conquest.

At the head of the State stood the king. Roughly speaking the king was absolute, for there was no power which could check him, and practically he could do pretty much what he liked so long as he did not drive his subjects to successful rebellion. Nothing can be more striking than the difference between the position of Henry I. and that of Edward the Confessor; and this was partly due to his personal character, but mainly to the changes introduced by William the Conqueror. It may be traced in the first place to the abolition of the great earldoms, and secondly to the strength which the king derived from the English form of feudalism. In theory the position of the king was exactly the same as it had been before the Conquest, in practice he had added to it the position of supreme feudal landowner. In title, however, the king is still king of the English, and he is so styled in all the documents of the time, just as his English predecessors had been before him. This title Henry had by election, but his marriage secured for his successor a real descent from the old Saxon line. His feudal position gave him a material advantage over the old English kings; he grew wealthy on the fines and dues of the great lords; he could compel them to follow him in war; while by keeping the fortresses in his own hands he prevented their military strength from being used against himself. Under him, too, the witan had little power. It met though it could not control; it exacted promises, but it could not secure their fulfilment. The king, indeed, combined in his own person the strength of both systems; he had all the prerogatives of the old English kings, he was also supreme landowner and feudal lord. There was no constitutional power which could control him, and he was therefore despotic, and but for two circumstances he might have permanently changed the character of the English monarchy.

But by the lucky chance that the title of each of the Norman kings rested on the election of the witan, and the fact that it was necessary to play off the English against the Normans, the forms of liberty were preserved, and it was only needful to breathe life into the dry bones to restore again the constitutional freedom which had been enjoyed before the Conquest.

Round the king were grouped a body of officials. As local government had been the strong point of the English, so central government was that of the Normans, and, therefore, we find that the king is surrounded by a number of officers, whose titles are almost unknown before the Conquest, but who now assist the king in the performance of his duties, and who were in time to become the real executive government. At their head stand the great officers who are common to all feudal courts—the High Steward, the Constable or Marshal, the Chamberlain, and the Cupbearer. These offices conveyed great dignity, and were usually held by great noblemen, who contrived to make them hereditary in their families; but no sooner did an office become hereditary than its importance ceased, for the English kings, while they made their crown hereditary, rejected the idea of choosing their ministers by the same rule. The real business was at once entrusted to some subordinate, while the older office became a mere title, connected only with the performance of some empty ceremony on occasions of state.

Of these subordinates the most important were the Justiciar, the Chancellor, and the Treasurer, whose lineal descendants are the Lord Chief Justice, the Lord Chancellor, and the First Lord of the Treasury. In Norman times the most important was the Justiciar.

The office of Justiciar was called into existence by the

needs of the times. The first office which at all corresponded to that of the Norman justiciary was filled by Earl Godwin. When Canute had to visit Denmark, he left Godwin in charge of England; when William the Conqueror visited Normandy, he left England under the care of Odo of Bayeux and William Fitz-Osbern, to whom were given the titles of Chief Justices. Godwin's office was merely temporary, but the Norman kings spent a great deal of time on the Continent, and so it was necessary to have some officer to whom the chief power could be trusted in their absence. William the Conqueror never felt strong enough to give this power into the hands of one man, but always divided it among two or three people who would act as checks upon one another. William Rufus, however, was able to appoint a single person, and this man was called the Chief Justice. The centralizing tendency of the Normans threw a great mass of business into the king's hands, so it was found useful even, when the king was in England, to have an officer who could represent him; so under William Rufus the office became permanent, and its occupant undertook the general superintendence of the judicial and financial affairs of the whole kingdom. It was far too high a post to be held by a powerful noble, nor was a baron likely to have the necessary administrative skill; so insignificant people were chosen, whose ability made them the better officers, while their weakness made them the more trusty servants. Almost invariably, too, a churchman, as better educated, and also as unable to found a legitimate family, was chosen. Such men were Ranulf Flambard, under Rufus, and Roger, Bishop of Salisbury, under Henry I., and they may be compared to their contemporary, the great minister of Louis VI. of France, Suger, Abbot of St. Denis. Such men were naturally hated by the nobles, who



saw in them the greatest obstacles to their own power, and who attacked them with the usual taunt of low birth, which simply expressed the fact that high birth can rarely contend on equal terms with talent. Next to the Chief Justice stood the Chancellor. His duty was to keep the king's seal, and as Edward the Confessor was the first king who had a seal, he was the first to keep a chancellor. He acted as first of the king's secretaries; did what writing had to be done; and, as the seal was applied to grants and answers to requests, the Chancellor naturally became the man to examine into these matters, so that his office steadily grew in importance with the growth of the king's power; but under the Norman kings his office ranked decidedly below that of the Chief Justice. The Chancellor was usually a clergyman, and often a bishop.

Then came the Treasurer. His duty was to look after the king's revenue. The treasure was kept at Winchester, the old capital of the West Saxons, and there the Treasurer usually lived. He received all money due to the king, inspected accounts, and acted as a sort of chancellor of the exchequer, though the king did his spending for himself.

These three officials shared between them the hatred of the barons (perhaps the Chancellor was the least unpopular of the three), they had to trust to the protection of the king, and, like Ranulf Flambard, ran the risk of being sacrificed to popular fury if the storm ran dangerously high.

The officers of the king's court formed a regular body. They sat in council, with the king, or in his absence the Justiciar, as chairman, and transacted all the business that, in theory, belonged to the king. When they were sitting in this way they were called the king's court or *Curia Regis*. It is not quite clear what was their theoretical position. Either they were merely the king's officers assembled to

give advice, or they were a permanent committee, to use a modern term, of the national assembly in which they were merged when it assembled in full force. Their practical powers, however, were plain enough. When they were sitting to decide questions which arose out of the revenue, they were called the Court of Exchequer, either, we are facetiously told, because the table round which they sat was marked like a chess-board, or because the contest between the treasurer, who received, and the sheriff, who collected the taxes, was suggestive of a game of chess. At this time the members who sat, the Justiciar, the Chancellor, the Treasurer, the Constable, the Chamberlain, and the King's Steward, and others nominated by the king, were called barons of the exchequer, a title which has come down to the present day. At other times the Curia dealt with those matters which came under the king's cognizance, (1) It was a place of final resort where appeals from the shire-moot were tried ; (2) it was a place of primary resort where quarrels between tenants-in-chief, that is, persons of consequence who held their land directly from the crown, were settled ; (3) it had power in some instances to call up cases from the lower courts and try them in the first instance ; (4) it sometimes exercised criminal jurisdiction ; (5) Henry I. sent down some of its members to sit in the shire-moot. In fact it was a court of all work, but we can recognize in its powers the functions which are now distributed among all the divisions of the present High Court of Justice.

The Curia Regis followed the king. The sovereign was always moving about from place to place. It was the only way in which justice could be brought to the doors of the subjects, or the king be informed of what was going on, and he took his court with him ; but on three occasions each year he held a formal court, or, as the English called

it, wore his crown, "at Easter at Winchester, at Pentecost at Westminster, at midwinter at Gloucester, and there came unto him the rich men over all England, archbishops and bishops, abbots and earls, thegns and knights."

This was the national assembly, the witenagemot of the old English kings, only in a Norman dress. By the Normans it was called the magnum concilium, or great council; but the Saxon chronicle still spoke of it as the witan, even in the reign of Stephen. Its members were the same. The archbishops, bishops, and abbots had sat in the witan since the English kingdom had become Christian; the earls of the Norman kings had taken the place of the ealdormen of the old days; the knights were the king's thanes. It was, however, a much more numerous body. The number of abbeys was steadily increasing. The knights, who became gradually identified with the tenants-in-chief, were very numerous, and on some occasions the king even summoned the whole body of landowners to attend, so that the council of Salisbury, held by William the Conqueror after the compilation of Domesday-book, which mustered 60,000 warriors, resembled a great review rather than a deliberative council.

Nor at the best of times did their deliberations amount to much. The assembly had ceased to be a check on the king. The churchmen were, to all practical purposes, nominated by him, and had, to a great extent, the same interests. The earls, who became afterwards such a powerful check, were now very few in number. William the Conqueror only created three, William Rufus three, Henry I. two; while the knights or barons were not individually very strong, nor was their attendance by any means regular, or even probably expected. Still it was a very great point that the form should be preserved. In theory no power was lost. But though the witan still elected the king, taxes

were probably collected without more than a mere nominal assent, and the king merely informs his bishops and barons of his legislative enactments. The only effectual resistance comes from the Church, and Anselm must receive credit for having been the man to bear aloft the banner of constitutional liberty in these dangerous times.

In local government little change followed the Conquest. In spite of the efforts of the feudal landowners, the courts of the shire and hundred were preserved. The nation still assembled for battle in the fyrd. The freeholders were still bound together in the tithing or the frank pledge to preserve order and act as bailsmen for each other. The great landowners were still responsible for their own men. Though England was passing through a revolution, few signs of it appear in the letter of the constitution. It is at the centre, not at the extremities, that change is most active. The system of Henry was an improvement on anything that had existed under the old English kings; it had to deal with a far more difficult time, and that it was practically successful is proved by the facts that Henry was called the Lion of Justice; and that under Stephen men called, not for the laws of Edward the Confessor, but for the laws of Henry I.

## CHAPTER V.

### REFORMS OF HENRY II.

NOTHING could have shown the practical wisdom of the course adopted by William the Conqueror and his sons better than the reign of Stephen. In every respect the contrast was complete : a weak king in the place of a strong one ; a disordered curia instead of a well-organized civil service ; the well-curbed barons of Henry I. masters of the situation ; the local courts neglected instead of encouraged ; the people subject to every kind of injustice and extortion. It was a time which might well be described by the chronicler as one "when every man did what was *wrong* in his own eyes."

At Henry's death all his plans came to nothing. Though he had carefully secured the homage of his subjects for his daughter Matilda, the widow of the emperor, Henry V., and now the wife of Geoffrey of Anjou, she was unable to carry out his scheme. For many reasons she was unpopular. To submit to the reign of a distaff was utterly distasteful to the warriors of the time ; as the wife of Geoffrey, the hated Angevin, she was regarded with the utmost suspicion by the Normans ; and above all, she represented the steady and irksome rule of the late king. Against these her one chance of popularity with the native English, her descent from the

ancient line, which, however, she shared with Stephen, if it did not make her more obnoxious to the Normans, at any rate was unable to secure her any advantage. On the other hand, in rejecting her the barons saw the chance of getting a king after their own heart.

Stephen of Blois, count of Mortain, grandson of William the Conqueror, united in himself some of the best elements of the feudal knight. Son of one of the most distinguished of the leaders of the first Crusade, he was himself a real soldier. Handsome in person, pleasing in address, generous to a fault, he won the hearts of all who came near him. Unhappily in his very virtues lay the seeds of his misfortunes. The Norman kings had not been successful monarchs because they were good warriors, though few could rival them in the field, but because they were good administrators and practical men of business. Even William Rufus had had a keen eye to his own profit, and Henry I., fond of pleasure though he was, delighted in the work of routine. But this was where Stephen was utterly wanting; he could neither appreciate the conditions to which he owed his throne, nor could he take the right steps to preserve it; he could only play the warrior, and he threw away in the cabinet the successes which he won upon the field.

His reign was a series of mistakes. His predecessor had secured his power by keeping on good terms with the Church, by supporting his officials, particularly his chief Justiciar, Roger of Salisbury and his relations, and by keeping a tight hand over the unruly barons. Of all these points Stephen was neglectful. He tried to keep the barons in a good temper by grants of titles and of portions from the crown lands; but no sooner were his means of giving exhausted than they turned against him, built castles on their own estates, harried the neighbouring lands, and

practically set up as independent princes after the type of the robber knights of Germany. Instead of supporting his officials, he attacked them, and threw Roger and his family into prison, an act which alienated the clergy, though his own brother Henry was Bishop of Winchester, and completely neutralized the grant of a charter which he had made to them on his accession.

These mistakes were so serious that, in spite of a victory at Northallerton, gained by his lieutenants over David, King of Scotland, the most active of Matilda's supporters, Stephen's power grew weak, and Matilda herself was encouraged to come to England under the care of her half-brother, Robert of Gloucester. Civil war followed, and England was plunged into terrible disorder. Sometimes the empress triumphed, sometimes Stephen; but the hearts of neither party were in the work, the nobles were fighting each for his own hand, and misery of every kind filled the land without the cause of either prevailing. At length hope dawned in the person of young Henry, Matilda's son. The death of Stephen's eldest son Eustace gave an opening for compromise; and finally, though Stephen had other children living, Henry was recognized as his heir, and on his death succeeded unopposed to the throne.

The reign of Stephen taught England what was meant by feudalism unrestrained by a strong central power, and the lesson was taken to heart. All the law abiding classes, the clergy, the officials, the townspeople and the English, were determined there should be no repetition of the scene, and were resolute to back up young Henry in the measures he might think necessary for the restoration of law and order, and an excellent champion they had.

Henry II. well deserves to stand with William the Conqueror and Edward I., as the three kings who more than all

the rest impressed their mark upon the form of the English constitution. Both by nature and education, he was well fitted for the task.

The new king was twenty-one years of age, and a model of energy both in mind and body. In person, though small and bow-legged, he was well knit, active, and thoroughly sound. His short, curly hair forbade any notion of luxury, and his sharp, piercing eye, which shot fire in his anger, impressed all with his powers of observation and intelligence. He was a great judge of character, and delighted to match himself in argument with the sharpest intellects of the day; and it was said that "he was so subtle in his mind that he would confound the Apostolic religion itself." Of walking, riding, and talking, he was never tired. He was rarely more than a day or two in the same place, and visited every portion of his vast dominions time after time. In his days the king's eye was everywhere, and when modern facilities for communication did not exist, activity and energy were two of the greatest qualifications of a good ruler. To these natural advantages Henry added an excellent training. He had been born into the midst of great events—English and Norman by his mother, an Angevin by his father, educated in Scotland, ruler by inheritance or by marriage of a larger share of modern France than the king of the French himself, he was wedded to no country nor to the prejudices of any one race; and was therefore not likely to sacrifice the interests of the empire to those of a particular part. Nor was he deficient in learning; for he had been well trained according to the ideas of the time, and in ecclesiastical law especially he might have rivalled his great descendant, Henry VIII., to whom in more than one respect he had a strong resemblance.

In England his policy was to govern as an English king,



to suppress the feudal barons, and to restore and develop the administrative arrangements of his grandfather, Henry I. To carry out his plans Henry had an excellent chance ; the orderly classes, wearied with the horrors of the last reign, were prepared to back up at all costs any king who would keep order, and in spite of casual differences, we find throughout the reign that the clergy, the officials, the towns, and the lower classes steadily supported the king in his struggle against the baronage. Taking advantage of this feeling, Henry at once set to work to clear away the abuses that had grown up under Stephen. He strengthened the crown by resuming the royal estates with which both Stephen and Matilda had bribed their adherents ; he demolished the adulterine castles which the nobles had set up in defiance of the law ; he put a stop to illegal coining and purified the coinage ; and, finally, he again put the administration of the exchequer into the hands of the family of Roger of Salisbury.

These measures occupied him during the first few years of his reign, and he then found himself drawn into a struggle with the Church, the history of which has done much to obscure the other important events of the reign. During these years Henry's chief adviser was his chancellor, Thomas à Becket. Becket was a man of great ability, an ecclesiastic, and it seemed to Henry that he was just the man to help him in carrying out a reform of the clergy. There were many reasons why such a reform was needful. Since the Conquest the clergy had rapidly increased, both in numbers and influence, and, though Henry I. had secured the hold of the crown over both the election of bishops and the property of the Church, there were other matters in which the Church was too independent. One of these was in regard to appeals from the ecclesiastical courts of the kingdom to Rome ; another was the trial of clerks accused of

crime. Before the Conquest, the ecclesiastical courts of the country had been insignificant, because the bishop had always sat with the ealdorman as joint chairmen of the shire-moot, and had taken cases in which the clergy were engaged in the ordinary course of business; but William the Conqueror's order, by which he removed the bishops from the shire-moots, had raised into prominence the bishop's court, and had introduced a system of ecclesiastical jurisdiction working side by side with the ordinary courts of the land. This had fatal effects; clerks claimed to have their cases tried before the bishop, and as the Pope was the head of the Church, appeals from the decisions of the ecclesiastical courts went to him and not to the king, so that there seemed a real chance that the clergy would slip by degrees completely out of the king's jurisdiction. Nor was it a small matter in the interests of law and order that the clergy should be tried in their own courts. "Ecclesiastic" at that time was a very wide term, and included not only the bishops, priests, and deacons, the regularly ordained ministers of the Church, but a host of monks and acolytes and hangers-on of every description, whose only claim to ecclesiastical sanctity was that they wore the tonsure. Over these men the courts of the Church had little control, for they could not punish with death, but only with deprivation of orders, whipping, or confinement in a monastery, which were not likely to prove effectual deterrents. Hence the evil grew, because bad men went into the Church as a means to secure themselves from the results of their own misdeeds, and when murder was a not unfrequent crime among the clergy, it was needful that the system which made it possible should be changed. No sooner, therefore, had a vacancy occurred in the Archbishopric of Canterbury, than Henry got his chancellor elected and proceeded to deal with the

question. As far as the punishment of clerks accused of crime was concerned, there could be no serious question that something ought to be done; but Henry unfortunately tried to reform the whole ecclesiastical system at once, and so by attempting too much, raised against himself the feeling which was growing among what may be called the high church party, that the Church was not a mere human institution to be dealt with as the king and council chose, and of this feeling Becket took full advantage to resist the king's proposals. These were brought forward by Henry at the Council of Clarendon. They professed to be merely a return to the old customs of the realm, but as a matter of fact, they included a good deal that was new. The chief provisions were these, and they practically amounted to a complete code for the regulation of the connection between Church and State.

I. Disputes about advowsons and presentations are to be tried by the king's courts.

II. Criminous clerks are to be tried by the king's courts, unless the justice sends the case to the ecclesiastical courts, and clerks thus convicted are to be punished as laymen.

III. No clergyman is to quit the realm without the consent of the king.

IV. Appeals from ecclesiastical courts are to go to the king, and unless he consents that they shall go further, are to be terminated, by his order, in the court of the archbishop.

V. No tenant-in-chief or minister of the king is to be excommunicated without the consent of the king.

VI. Clergymen are to hold their lands as tenants-in-chief, and to perform all duties, and attend the king's court with the other tenants-in-chief.

VII. Elections of archbishops, bishops, and abbots, are to take place by order of the king in the king's chapel, and

the man elected is to do homage for his lands before he is consecrated.

VIII. Sons of villeins are not to be consecrated without the consent of their lords.

These regulations re-enacted the most important arrangements of William the Conqueror and Henry I., and they also dealt with the difficulty caused both in civil and criminal cases by the separation made between the national and ecclesiastical courts. Their spirit, however, was to make the Church subordinate to the State, and as such they were attacked by Becket, backed by all the force of the Papacy. Henry insisted, and Becket left the country; but the absolute necessity for Henry's legislation was shown by the complaints of the ecclesiastical chronicler who grumbled, "then was seen the mournful spectacle of priests and deacons who had committed murder, manslaughter, theft, robbery, and other crimes, carried in carts before the king's commissioners and punished just as if they had been ordinary men." Had Henry succeeded in carrying out his plan, the history of the relation between Church and State in England might have been different, but he failed; the struggle was mixed up with other matters, and the murder of Becket aroused so much ill feeling, that Henry had to give way and allow the trials of clerks to take place in the ecclesiastical courts, and not to interfere with appeals to Rome. John's submission to the Pope subordinated for a time the state to the Church, his granting freedom of election gave the clergy, nominally at any rate, the right to appoint their own officers; under Henry III. the payment of annates was secured by the Pope, and the constant struggle to prevent interference on the part of the Pope with the independence of the Church and the exercise of preferment, which are marked by the series of statutes

of *præmunire* and provisors, lasted until the Reformation itself.

In his struggle against the nobility Henry was more successful. His first effort was to reorganize the administration of justice. It was noticed that in the old English institutions the local courts were strong, while the central administration was weak, while under the Normans the case was reversed. Henry's great aim was to unite the two systems. The first step in this direction had been made in 1131 by Henry I., who had sent a commission or deputation of judges from the king's court to sit in the shire-moots. This plan Henry determined to revive and make permanent, so at a great meeting at Clarendon, in 1166, he brought forward his new scheme, embodied in what was called an assize. By this it was arranged in the first place that two justices in itinere, or justices-in-eyre, *i.e.* on their travels, should go through the country and sit as chairmen of the shire-moots, something as the ealdorman and bishop had formerly done, while their decisions were to be carried out as before, by the sheriff. In 1168 four justices were sent, and England was divided into six regular circuits, which existed unchanged till recent times.

At the same time the method of administering justice was improved. In former times criminals had been brought before the court by men who represented the authority of the shire; but Henry's assize arranged that four knights representing the shire, with twelve men representing each hundred, and four representing each township, should act as a jury who should bring before the justices the notorious malefactors from each township of each hundred in turn, and that these should then be sent to the ordeal. If condemned, they were punished, but if not, it was thought that characters so suspicious had better be out of the way, and they were ordered to leave the country. This was the origin

of the grand jury who present criminals to the judge as likely to be guilty, and the actual guilt is determined by the ordeal or judgment of God, from which there is no appeal.

Out of this rose a new institution. In 1215 the Lateran Council did away with the ordeal, and a substitute had to be found.\* This was the little or petty jury, which was originally composed of twelve witnesses who knew the facts; but by degrees, as it was found impossible always to get the first twelve to agree, others were added, till twelve were agreed one way or the other, and in time a distinction was made between those who gave the verdict and those who gave evidence, and the jury and the witnesses for the prosecution took their present form. It was only at a much later date that the accused was allowed to call witnesses for the defence.

The civil jury also arose in Henry II.'s reign. Before the Conquest civil suits were decided by the whole body of duly qualified freeholders who attended the court; but the Normans introduced the plan of trial by battle. This was much disliked by the English and the townspeople, and one of the first objects of the towns was to get rid of it. Henry, however, by the grand assize, made it optional whether the parties would have the case decided by battle or by a jury of twelve men from the neighbourhood, who were supposed to know the facts; and this is the origin of the civil jury, though trial by battle was not legally abolished till 1819.

When Henry had carried out these reforms, he had practically put the administration of justice into the form from which the present system has developed, and he had firmly united the central with the local courts. In the central courts, too, he introduced a change. Up to this time the only committee of the king's court was the exchequer; but in 1178 Henry formed a new committee, called the Court of King's Bench, from which there was an appeal to the

king's court. This was the first of a series which split off at later times—the Court of Common Pleas, the Court of Chancery, the Court of Admiralty, all of which by degrees became separated from the Curia Regis, which still, however, as the Privy Council, retained in theory all its old functions, and they became more and more distinct, till in our own time they have been united together to form the High Court of Justice.

We have now reviewed Henry's dealings with the Church and the law; we must next see how he treated the barons. The power of the great feudatories had been seriously curtailed by the action of William the Conqueror; they were made still weaker by Henry II. It had been a great object of the barons to secure for themselves the chief influence at the local courts; and while they preserved the same forms as the ordinary courts, they had practically succeeded in many instances in turning the hundred courts and town-moots, which existed on their estates into feudal courts, of their own. This practice Henry stopped by ordering his justices-in-eyre to go into all liberties and franchises, and allow no privileges to come between them and the criminals. So from this time forward all parts of the kingdom were thoroughly under the king's authority.

In another respect the barons suffered a still greater blow. Under the Norman kings there were two military systems side by side—the feudal array and the old English militia or fyrd. William and his sons had employed first one and then the other. William Rufus, on one occasion, summoned the fyrd to join him in Normandy, but contented himself by having their journey money collected from them on their arrival at the coast, and sending them home penniless; on another, the fyrd had helped to win the battle of Northallerton against the Scots, and it had done good service

against the unruly barons. Henry II., however, introduced a new plan. In 1159 he called upon the barons, instead of following him to France, to pay, in commutation of their feudal service, a sum called scutage or shield money, and afterwards this became the regular practice. This plan weakened the barons in two ways. It made them poor, while it made the king rich; and it allowed the feudal system to fall into decay, while the king was able to hire mercenaries on whom he could depend.

These reforms were naturally utterly distasteful to the barons, and in 1173 and 1174, just one hundred years after their first rising against William the Conqueror, the barons joined in league with the kings of France and Scotland, the Count of Flanders, and Henry's sons, and did their best to overthrow Henry. Then it was that the king reaped the benefit of his good government, for the great mass of the nation, the Church (in spite of the momentary alienation caused by the difficulties with Becket), the court officials, the towns, and the English, threw themselves on Henry's side, and helped him to put down the last effort of the barons. Rapid vengeance followed. It was not enough to deprive the barons of their military power, it must be placed in loyal hands; and so in 1181, by the Assize of Arms, the old English militia was thoroughly revived and reorganized, its weapons were settled, it was further regulated by the Statute of Winchester in the time of Edward I., and it became the main instrument of home defence till the rise of the standing army.

It was not only by new enactments that Henry strengthened the constitution of the country. His practice did much to develop its institutions. He regularly summoned the *Magnum Concilium* or great council, the assembly which included archbishops, bishops, and abbots, earls, barons



and tenants-in-chief, and which was in the main a fair representation of the nation at large. For as yet the towns were not of much consequence, though they were rapidly becoming so; and the firm rule of Henry II., the intercourse with the Continent which followed his accession, were rapidly bringing into importance the commercial classes, whose earliest efforts at freedom brought with them the need for a distinct representation.

Henry's reign, then, was on the whole a success. It is true that his ecclesiastical legislation was a failure, and that he probably left the Church more independent than he found it; on the other hand, his measures in respect of the law courts and of the army were thoroughly successful. He had reduced to a system and made legal the administration of Henry I. He had profited by the memory of Stephen's reign to thoroughly beat down the power of the old Conquest barons, as against the king and the nation. Under him good order and security were obtained for peaceful citizens, and he left the nation in a position to win from his sons those guarantees for individual freedom which had been somewhat lost sight of in the struggle against baronial lawlessness.

## CHAPTER VI.

### THE GREAT CHARTER AND THE RISE OF PARLIAMENT.

THE accession of Richard I. marks an important moment in the history of English government. Since the Conquest our sympathy has been all for the king ; we have watched him struggling against the lawless nobles, and every gain he has made in power we have felt to be so much won in the cause of good government. We are now coming to a period when our sympathies will be the other way, for we are going to examine a contest between the king and the nation which has determined the form of the English constitution. Hitherto the power of the king has been steadily growing. Henry II. was in all essential points a despot. The barons were the only people who had a chance of controlling him, and their power was balanced by the alliance of the Church and people with the king. Such an alliance as this, however, could not last for long. Had Henry II. been succeeded by kings as wise, as able, and as well-intentioned as himself, the liberties of the subject might have become mere forms, and England might have become another France ; but happily for us, Richard I. and John were men of a very different type, and their rule dissolved the alliance between the Church, the king and the people, and arrayed nobles, clergy, and commons against the overweening power of the monarchy.

It was during the reign of Richard that the seeds of this new alliance were sown. In some respects Richard was not unlike Stephen. He was handsome and vigorous, able in war, careless in administration, and his interests lay so much more in France and in Palestine, than in England, that he willingly trusted the affairs of the island to the hands of subordinate ministers. But this had in itself an excellent effect, for Henry II. had left behind him a set of officials and financiers who were well able to manage the kingdom so long as they had the royal support; and the ten years of Richard's reign were most valuable, as a time when the system of Henry II. could get, as it were, set, and implant itself firmly in the life of the country.

Other changes appeared. Henry II. had raised up a new class of nobility, he had ennobled many of his officials, and had given them land in the north of England, and these northern barons soon played a most important part. They acted as a check on the old Conquest barons, by whom they were disliked and despised; and their wealth and power enabled them to act at times as arbiters of the fate of the country. The towns, too, grew in importance, and acquired a legal standing. For long after the Conquest most of the towns were not legally distinguished from ordinary villages, they still had their reeve, their taxes were collected by the sheriff, and they were forced to attend the hundred and county courts. So long as this was the case they could have no great constitutional power; but as they increased in wealth their first investment was to buy from the king municipal rights. The rights they aimed at getting, were, for the most part, three in number. First, to have a merchant guild in which the chief traders of the town were incorporated; secondly, to be allowed to pay their taxes direct to the king, and so to avoid the exactions of the

sheriff; third, to be excused attendance at the hundred and county courts, and to have all suits, in which a townsman was engaged, tried in their town court. These rights were embodied in a charter, by which the town was incorporated under a regular government, at the head of which was the old town reeve or port reeve, who, after the accession of Richard, often took the name of mayor, a title borrowed from the corporate towns of the Continent. These charters were frequently granted by the Norman kings and Henry II., but they were granted in profusion by Richard, whom necessity drove to use every means of getting money. These corporate towns formed a new element. They stood apart from the rest of the country, for they had nothing to do with the sheriff, had their own courts, and paid their taxes directly to the king; and it was this which gave them a distinct political standing, which was soon to receive a constitutional recognition.

While Richard was away, the government was carried on by his ministers. The first of these was William Longchamp, who combined in his own person a variety of offices. His unpopularity excited a rising, which caused his removal; but this event must be looked upon as a personal matter rather than as an early assertion of the principle of ministerial responsibility. William Longchamp was succeeded by Walter of Coutances, and he by Hubert Walter, Archbishop of Canterbury, who, with Geoffrey Fitz-Peter and Queen Eleanor, widow of Henry II., practically carried on the government till a chance arrow at the siege of Chaluz removed the nominal sovereign.

The death of Richard left a disputed succession. According to modern ideas, Arthur of Brittany, the son of Geoffrey, the next brother to Richard, was heir to the throne; but as had been the rule in old English times, the

barons preferred the uncle of full age, and, after obtaining a promise of good government, they chose John, the youngest son of Henry II., to be king.

As far as low cunning was concerned, John was able enough; but he was quite devoid of principle, had a reckless disregard for the feelings of others, and gained himself one enemy after another. Before he had reigned fifteen years, he had lost Normandy, and most of the dominions of his mother; he had alienated the Church, and he had thoroughly disgusted not only the old feudal nobles, but the new nobility of his father.

Each of these had an important bearing on constitutional history. The loss of Normandy forced the old barons who held lands on both sides of the Channel, to make up their minds once for all to be Englishmen or Frenchmen, and, whether they gave up one set of estates or the other, or whether, as in the case of the Montforts, the eldest son had the lands in France, and the younger those in England, the English nobility from henceforth were Englishmen and not foreigners, had to throw in their interests with the rest of the nation, and seek an outlet for ambition in their own country.

In another way, too, the loss of Normandy affected the history. As the king and the nobles had now become English in feelings and interests, a dislike of foreigners, as such, sprung up, which had most important results, for on the one side it intensified national feeling, on the other it chanced to afford the most obvious ground of discontent with the king, who had a strong liking for his French subjects, especially for the Poitevins, at the head of whom was Peter des Roches, Bishop of Winchester.

John's quarrel with the Church did what the struggle between Henry and Becket could not effect. For a moment,

at any rate, it divided the interest of the Church from that of the king, and arrayed the clergy on the side of the people and nobles, who were ready to combine with the northern barons in winning some security against arbitrary power. It arose out of a disputed election to the Archbishopric of Canterbury, and this gave an opportunity to the Pope for interference in English affairs. He persuaded the monks of Canterbury to chose Stephen Langton, an Englishman who held a prominent position at Rome, and as John refused to receive him, the country was placed under an interdict. This was used by John as an excuse for pillaging the property of the Church, and the clergy naturally allied with his enemies.

To enforce his decision and to punish John, Innocent III. called in the aid of Philip Augustus of France, excommunicated and dethroned John, and authorized Philip to carry the sentence into effect. Confronted by this danger, John showed the greatest cunning. He determined to get rid of one enemy by submission, of the other by force, so he actually agreed to hold England as a fief of the Papal See, and to pay a tribute of one thousand marks a year. Henceforward, the Pope was his friend, even against the clergy, and a naval victory over the French, for a time made John secure. But the barons refused to help him to press his success by an invasion of France; they declined to accompany him, first on the ground that John was excommunicated, and, when that difficulty was removed, on the plea that they were not bound to go by feudal law. This brought matters to a crisis. The new Archbishop, Stephen Langton, threw himself on the side of the barons, and gave them something to demand by bringing to their notice the old charter of Henry I. Matters were in this state when John's troops received a crushing defeat at Bouvines, while fighting for his

nephew, Otto the Emperor, to whom he had looked to keep Philip in check. On hearing of this battle, John, who was in Poitou, returned to England, and again set to work to divide his enemies. To do this he gave to the Church freedom of election, and surrendered the great right for which Henry I. had struggled with Anselm. At the same time, to place himself still more under the protection of the Church, he took the Cross as a Crusader, and then demanded the oath of allegiance from all his subjects. In reply, the barons summoned their vassals, and appealed to arms. A few of the old servants of his father, and some personal friends, held by John to the last, but the mass of the nation was against him, and John, finding resistance out of the question, made up his mind to accept the demands of the barons and to sign the Great Charter.

In the Great Charter we find a picture of the chief difficulties of the time, and the ideas of the barons as to the best methods of dealing with them. Some of the provisions are of permanent, some only of temporary interest. They may be divided roughly under seven heads: (1) The Church; (2) feudalism; (3) the constitution; (4) justice; (5) general matters; (6) the forest and rivers; (7) matters of temporary interest. Of these, the first four have a distinct constitutional importance. (1) The old rights of the Church together with the newly acquired right of free election were secured to the Church. This practically fixed the relation of Church and State till the Reformation. Had it been carried out in practice, the Church would, in the matter of appointing its officers, have been completely independent of the State; but the Pope soon gained the real right of appointing, and he and the king presently arrived at a practical compromise, by which the Pope appointed the man who was nominated by the king. (2) The provisions which concerned feudalism

were a development of those of Henry I.'s charter. Where Henry I. had promised moderate reliefs and a just exercise of the rights of wardship and marriage, the new charter laid down definite rules; but where Henry I. had thought it needful to lay down the maxim that the barons should treat their vassals as they expected him to treat themselves, the barons of the charter inserted the same rule to secure the good-will of their new allies. (3) The most important points touched taxation, the meeting of the great council, and the carrying out of the provisions of the charter. Besides the three regular feudal aids which could be collected either to ransom the king from captivity, on the occasion of his eldest son being made a knight, or on the first marriage of his eldest daughter, no other aids or taxes could be collected except by the consent of the great council. This rule laid down the principle which had been followed in the grant of the Danegeld by the witan, and which had never been constitutionally laid aside, that the money of the subject could not be taken out of his pocket without his own consent. (4) A valuable safeguard against arbitrary power was secured by the provision that no man was to be imprisoned, outlawed, punished, or molested, but by the judgment of his equals or by the law of the land. The existence of the law courts as an institution separate from the king's council, was further advanced by the arrangement that the Court of Common Pleas, the court where what we now call civil cases are tried in the highest resort, instead of following the king's person, was to stay at a fixed place, *i.e.* at Westminster.

The great council, which was to grant taxes, was to be summoned in the following manner. A separate writ was to be sent to each of the archbishops, bishops and abbots, and to each of the earls and greater barons, and a general writ of summons was to be sent to the lesser barons through the



sheriff, and was to be read by him in the county court. Moreover, forty days' notice was to be given of the time of the meeting of the assembly, and of the cause of its summons. Now this great council included the descendants of the old members of the witenagemot, the archbishops, bishops and abbots, ealdormen and king's thegns. The king's thegns, however, had by this time become so numerous, being identified with the tenants-in-chief, as to be divided into two classes, the greater and the lesser barons.

This assembly, however, was subject to two drawbacks. In the first place, the lesser barons were most unlikely to attend in person, and, if their opinion was wanted, some arrangement would have to be found by which they could give it through representatives; and secondly, the towns which were rapidly becoming most important from a taxing point of view, were not included at all. This did not, however, relieve them from taxation. Their goods were demanded by way of a tallage, which the king, as their feudal superior, collected from them at his own will, and which corresponded to the aid which was to be henceforth voted only by the free will of the clergy and tenants-in-chief, an arrangement which the towns were hardly likely to consider as permanently satisfactory.

These were the most important provisions of the charter, which affected the government, and they secured for the clergy and the tenants-in-chief freedom from arbitrary taxation, and provided for the meeting of an assembly. Lastly, the provisions of the charter were to be carried out by a committee, consisting of the chief members of the baronial party and the Mayor of London. This is the first instance of the plan of superseding the king's government by a commission, but it was used again and again, and was a most valuable means of educating the people in the method

of self-government, and a step towards securing a permanent control over the appointment of the king's council.

No sooner was the charter signed, than John was absolved from his promise by his new ally, the Pope. On this the barons again took up arms and called in John's nephew, the son of Philip Augustus; but the struggle was brought to an abrupt conclusion by the sudden death of John. Round his little son Henry the most influential members of the national party rallied, for their quarrel was not with the crown but with John, and the victory of Lincoln soon freed the kingdom from the French. As Henry was only nine years old, the government was carried on in his name. The chief officers were William Marshall, Earl of Pembroke, who had held by John to the last, though his eldest son had joined the barons, Archbishop Langton, and the papal legate, who claimed a place as the representative of the feudal superior. For a long time the council had plenty to do in securing order and in curbing the pretensions of the legate; but they ruled on the whole well, and the assumption of the government by Henry was a change for the worse. Henry united with personal piety, the political faults of his father, including his faithlessness. Moreover, he was weak and extravagant, and could never be true even to his most faithful servants. The twenty-six years of his personal rule, which lie between 1232 and 1258, were most disastrous. The clergy were impoverished and weakened by the legalized exactions of the papacy; the barons were infuriated by the honours and riches given to the foreigners who swarmed around the court, and the people and towns were crushed under a terrible load of taxation. We may be surprised at this when we know that the Great Charter was still in force. But when it was renewed in 1216, the important constitutional articles of the taxation and the assembly were carefully omitted by the

barons who had now come into power, and they had their reward in the exactions of Henry III.

Against this misrule the country found a champion in Simon de Montfort, Earl of Leicester, whose elder brother, on the separation between England and Normandy, had chosen the county of Evreux. Strangely enough Simon de Montfort was himself a foreigner in everything but feeling. His earldom of Leicester, however, gave him a standing among the English barons, and his marriage with the king's sister gave him a prominent position at court, and on his quarrel with the king he threw himself on the side of the country. Several attempts were made to secure a hold over the government. Twice the great council had demanded control over the appointment of ministers, but at length, in 1258, just after De Montfort had quarrelled with the king and his foreign favourites, Henry's enormous debts forced him to call together at Oxford an assembly which we may now begin to call a Parliament, for the lesser barons were now, as they had been in 1254, represented by knights of the shire. This was the famous mad Parliament of Oxford, and with its meetings begins the story of the relation between the Parliament and the king. Headed by De Montfort and the Earl of Gloucester, the Parliament determined to again put the government into commission, and drew up the somewhat complicated Provisions of Oxford, in accordance with which a council of fifteen members was appointed to carry on the government, and a temporary committee of twenty-four was to see to the reform of abuses. To look after the council, Parliament itself was to meet three times a year. By this plan Henry was completely shelved, and an attempt was made to get him to give his sanction to the arrangement. He complied ; but, imitating his father, obtained an absolution from the Pope, and on the failure of an attempt to

submit the quarrel for arbitration to St. Louis, King of France, war broke out and the king was defeated and captured at the battle of Lewes.

De Montfort then summoned his great Parliament of 1265, to which there came not only knights of the shire, but also representatives from cities and boroughs.

Representation was a plant of very slow growth. It is possible to find indications of it long before it was applied to Parliament. Before the Conquest we find the twelve legal men of the hundred, and the reeve and four men of each township, who in a way represented the hundred and township at the county court. After the Conquest, William the Conqueror, in 1070, ordered that the laws of England should be declared by twelve men of each shire. Domesday-book was the result of the depositions of representative villeins. The jury was another form of representation: matters of fact in civil cases were decided by the word of twelve men who knew the case, and who stood for the whole body of the suitors; in criminal cases the jury of presentment created by the Assize of Clarendon was distinctly representative. It was also used in matters of taxation: Richard I. ordered that the amount to be paid by each person towards the Saladin tithe, a tax collected towards a crusade for the recovery of Jerusalem, should be fixed by four elected knights, and the king's interests in the county were looked after by four elected knights called coroners.

By the reign of John, then, the principle of representation was in frequent use for many purposes, and it was then first applied to national representation, for in 1213, just after Archbishop Langton had produced the charter of Henry I., the sheriffs were ordered to send four discreet men of each shire to consult with the king at Oxford. Such being the case, it was rather curious than otherwise that the plan was

not used in the Great Charter to secure a due voice in the assembly to the lesser barons; but so it was, and it was not till the year 1254 that two knights of the shire were summoned to Parliament from each county, and we find the same thing practised in the mad Parliament. But this summons of knights of the shire involved a wider issue than the mere representation of the lesser barons. The only place where they could be elected was the county court, and to that court might come not only the greater and lesser barons, but the tenants who did not hold by feudal tenure, the freemen and the under vassals of the tenants-in-chief, and even the villeins; and as there was no distinction of persons, the election was made by the whole county, and the knights of the shire were truly national representatives.

The towns, however, were still excluded, but their right to a separate system of taxation made it absolutely necessary for a popular government like that of De Montfort to consult them, and so we find the cities and towns sending their representatives to the Parliament of 1265.

The only section of the nation who were still excluded from direct representation, were the lower clergy.

For years the government of Simon de Montfort represented the ideal at which English statesmen aimed, a Parliament thoroughly representing the nation and a ministry nominated by Parliament. It would be too much to say that pure patriotism was the only motive for thus transferring the power of the king to the nobility, or that a regard for popular rights rather than the promptings of temporary expediency made the barons call in the aid of the counties and the towns. On the other hand it is remarkable that all over Europe the thirteenth century was marked by the rise of constitutional government. In England, at any rate, the change introduced no new principle except

that of permitting persons to act through representatives. The Parliament of Simon de Montfort was the legitimate descendant of the witenagemot, the control which the people had newly acquired over the executive government was rather a revival of their old rights than the assertion of a new claim.

Under Simon de Montfort, however, this system could not last. Its weak point was that it was set up in defiance of the will of the reigning sovereign, and the dissensions between the barons were too much ingrained to be forgotten for more than a moment. Quarrels soon broke out between Simon de Montfort and the Earl of Gloucester, son of the one mentioned above; Edward, Henry's eldest son, succeeded in escaping; De Montfort was defeated and killed at Evesham, and Henry was restored to power.

Simon, however, had not lived in vain. From his time we hear no more of foreign favourites, the feudal sovereignty of the Pope was practically forgotten, and he had given to Englishmen a clear idea of what to aim at for the future, viz. the regular meeting of a national assembly who should have complete control over taxation, legislation, and the appointment of the chief officers of the kingdom.

## CHAPTER VII.

### PARLIAMENT UNDER THE FIRST EDWARDS.

WITH the accession of Edward I. we again reach a new period in the history of Parliament. Under Simon de Montfort, Parliament had been a casual institution. It had only met at intervals, and the presence of the citizens and burgesses had been due to incidental needs, and so little appreciated was the necessity for their presence that thirty years passed away before a complete Parliament again met at Westminster. But though the towns were unrepresented, the Parliament met regularly and had plenty to do.

The interest of Edward's campaigns in Scotland and Wales has attracted attention from the domestic history of his reign. This is not right, for Edward was great as an organizer and legislator, and in many respects his reign forms the complement of that of his great grandfather Henry II. Like Henry, Edward was a man of orderly mind, indeed he was almost too lawyer-like in his way of thinking, and clung eagerly to the letter of the law where he thought he saw his own advantage. But tenacious as he was of the royal prerogative, he had a true eye for the interests of his country, and he left his kingdom in every respect better than he found it.

Hardly any point which Henry II. had treated was left untouched by Edward. He secured a tighter hold over the

clergy. Since the time of Henry two new difficulties had cropped up. The first was in the matter of land. For a long time the clergy had held a very large share of the best land in the country, and as they were not subject to the rights of wardship, marriage and reliefs, they held it under more favourable conditions than the laity. Under these circumstances, besides the usual grants of land which the pious made to the Church, the profane had discovered that by nominally giving up their lands to the Church, in reality by receiving them back again as perpetual tenants, both they and the Church made a good bargain, while the crown was cheated of its dues. Edward put a stop to this by the Statute of Mortmain, which forbade the leaving or surrendering of land to the Church. In the next place, in pursuance of the papal plan of making the Church independent of the State, Boniface VIII., the Pope, issued a bull, which forbade the clergy to pay any taxes. Edward rejoined by the obvious retort that if the clergy paid nothing for the maintenance of the State they had no right to the advantages it gave them, such as the law courts and protection for property, and put them outside the law. This plan of carrying out the theory to its logical conclusion soon brought the clergy to their senses; and though they could not disobey the Pope by paying a *tax*, they agreed to make a *present* to the king instead. This practice continued down to the Restoration, and as a matter of fact the clergy in convocation usually voted the king a larger grant than was paid by the laity.

Edward arranged that the justices-in-eyre should go round the old circuits of Henry II. once a year, at first to try criminal cases only, but afterwards civil cases also, and this they have continued to do to the present time. Another improvement was the creation of a new body of officials to assist the sheriffs in keeping the peace in the country



districts. These were the conservators of the peace, who have now become the justices of the peace, our unpaid local magistracy.

To improve the defences of the country, Edward, by the Statute of Winchester, re-enacted the Assize of Arms of Henry II., which organized the militia and regulated the arms which must be kept by every man according to his rank.

But the most important action of Edward concerned the Parliament. In 1295, met the first complete and model Parliament of England.

There were present eight earls and forty-one barons, making a total of forty-nine lay peers, two archbishops and eighteen bishops, sixty-seven abbots and priors, all of which classes had sat in the ancient witenagemot, and a representative each for the new military orders of the Temple, of St. John, and of Sempringham. Besides, to make the representation of the clergy complete, each bishop and archbishop was ordered to bring two members for the chapter of his cathedral and two for the clergy of each archdeaconry in his diocese. The clergy, however, as we saw above, soon began to vote their grants in convocation, so these last were unwilling to come, and down to the Reformation the clergy were represented by the archbishops, bishops, abbots, priors, and masters of orders. In 1295 these made a total of ninety as compared to the forty-nine lay peers, whereas at the present day there are four hundred and eighty-five lay peers to twenty-six bishops and archbishops, a vast change. Passing on we come to seventy-four members who represented in theory the lesser barons, but in practice the commonalty of thirty-seven counties, for Monmouth sent no member as being Welsh, and Cheshire and Durham were excluded as county palatines having assemblies of their own.

Next came two hundred and thirty-two members who represented the cities and boroughs, a very large number as compared to the counties, who at the present time send two hundred and eighty-three as against three hundred and sixty-six. The members did not sit in two houses as at present, but sometimes promiscuously, sometimes by orders.

The powers which this national assembly or Parliament held were those which had been handed down from the old witan. On the king's accession they received him by swearing allegiance, and though the actual election of the king had been in abeyance since the election of John, it was revived again at the deposition of Edward II. The lords and clergy were still the supreme law court of the land, though the judges who acted as the representatives of the king's ordinary council held the most prominent place. Since the days of the Danegeld the right of Parliament to grant taxes had never been denied in theory and had been actually stated in the Great Charter. And lastly there was no question that Parliament was the only legislative body in the land.

It was not very long, however, before the right of Parliament to grant taxes was officially stated. Two years after the meeting of the model Parliament of 1295, Edward was at war with France, and proposed to go himself to Flanders, while Earl Bohun of Hereford, the Constable, and Earl Bigod of Norfolk, the Marshal, were to lead an expedition to Guienne. Encouraged by the example of the clergy who were just struggling against the payment of taxes, the earls refused to go, on the ground that their tenures only bound them to follow the king in person. Edward retorted by seizing the wool of the merchants and calling out a military levy of the whole kingdom. A considerable number of nobles came to the levy, and these Edward induced to

grant an aid. But the earls then took their stand upon their constitutional rights; they forbade the collection of the aid, and demanded a confirmation of the charters. It was a terrible crisis. Wallace was up in arms in Scotland, and at this moment won the battle of Cambuskenneth, while Philip of France was ready for war. Edward was forced to go to Flanders and leave his eldest son Edward, as Regent, with orders to summon a Parliament and make the best terms he could. Parliament met, and the Regent found that there was nothing for it but to sign a confirmation of the charters, in which it was moreover agreed that the recent exactions were not to be made precedents, that a forced tax on wool called the *maletote* was to be discontinued, and "that no aids, taxes or prizes were to be taken but by the common assent of the realm, and for the common profit thereof, saving the ancient aids and prizes due and accustomed." This last clause had special reference to the three aids which had been excepted in the Great Charter, but it was obviously capable of a good deal of stretching. Oddly enough, however, in the "*de tallagio non concedendo*" (about not granting a tallage), an unauthorized abstract of the confirmation, this clause was omitted, and as the *de tallagio* and not the confirmation was taken to be the law in Hampden's time, the crown lawyers were deprived of a very valuable loophole. The confirmation of the charters was accepted by Edward himself at Ghent; and in 1301, at the Parliament of Lincoln, the charters were again finally confirmed, and a subsequent Act in 1362, which forbade the merchants or any other body to vote any tax on wool, completed the legislation on taxation till we reach the times of Richard III.

Parliament, in this way, secured its chief rights. Under Edward I. it became not merely a disagreeable incident but a regular part of the king's scheme of government. He

took it into his confidence, employed it to pass extensive legislative codes, such as the Statutes of Winchester and Westminster, consulted it on matters of foreign and domestic policy, and finally, though sorely against his will, granted to it control over taxation. It was the great use which was made of Parliament in this reign which made that body so important. It backed up Edward's policy in Scotland and Wales, it supported him against the Pope, and with the one exception of the temporary difficulty about taxation, a right which it was hardly to be expected that any sovereign would give up without a struggle, Edward and the national assembly were on thoroughly good terms and worked for the same ends.

It was very different under his successor, Edward II. The new king was a man of no principle whatever. Good looking and affable, with great power of attaching his immediate friends to his person, Edward cared nothing about his kingdom as a whole, was utterly untrustworthy, and could never be relied upon to keep his word. Moreover, whatever Edward's personal character had been, the situation would still have been full of difficulty. By getting the control over taxation, Parliament had in reality gained control over the policy of the crown. So long as it and the king were in accord this had worked well enough, but the slightest hitch was certain to cause trouble. The king must control Parliament or Parliament must control the king; there was no middle course. In this case the difficulty took the form of a contest about favourites. To this word an odious meaning has been given. It really includes two ideas, first, that of a man whom the king employs as his trusted servant and adviser; secondly, that of a man who is enriched by the king's favour. A man of the first class, who was certain to arise unless the king was able to

place complete confidence in his great nobles (who thought that they ought to be his only advisers), and who always did arise in every nation in Europe, was certain, however good he might be, to be hated by the nobility; while a man of the second, was likely to be hated by both the nobility, who envied his riches, and the people, who had to pay taxes to make up for the king's gifts to the favourite. Piers Gaveston, the first favourite of Edward II., combined in his own person the characteristics of both classes. He was thoroughly able, he was in favour with the king to the exclusion of the nobility, he was overwhelmed with riches and honours, above all, he was a foreigner; and to all these atrocities he added a power of calling his enemies by such telling nicknames that their possessors always felt their sting. Against Gaveston the nobles found a champion in Thomas, Earl of Lancaster. This nobleman is the representative of a class. As the son of Edmund Crouchback, the younger brother of Edward I., he was the head of a junior branch of the royal family, and throughout the Middle Ages, whether its representative was Thomas of Lancaster, Henry of Hereford, Humfrey of Gloucester, or Richard of York, the younger branch of the royal family was at daggers drawn with the chief minister of the time. Again and again the nobles insisted on the banishment of Gaveston, and finally, in 1310, they took the government into their own hands and set up a council called the Lords' Ordainers, on the pattern of those which had been appointed to enforce the Great Charter, and to carry out the Provisions of Oxford. These Ordainers governed England for a year, and their arrangements were ratified by Parliament. Again Gaveston was recalled, but this time he fell into the hands of the barons and was beheaded. For some years no favourite appeared, and after Edward had been routed at

the battle of Bannockburn, he was obliged to appoint as his chief officers, the nominees of Lancaster. In a few years, however, two new favourites come upon the scene, the Despensers, father and son. The Despensers were Englishmen, and no objection could be made to them as upstarts, for they were among the most wealthy and powerful of the English nobility; still they stood in the way of the other nobles, and Lancaster headed a new combination against them. The Despensers were banished; but Edward, taking advantage of a reaction in his favour, recalled them, raised an army, beat Lancaster at Boroughbridge, and executed him at Pontefract. A new combination was then made. The queen deserted Edward, and allied herself to Roger Mortimer, a member of Lancaster's party; Edward found himself deserted by the mass of the nation; the Despensers were seized and executed; an attempt to escape failed; and finally Adam Orleton, Bishop of Hereford, asked Parliament whether they would have father or son for king. Parliament declared for young Edward, and, in pursuance of feudal custom, the allegiance of the several orders was withdrawn from Edward, the officers of state broke their staves of office, and he ceased to reign, deposed by the same right which had in old days got rid of Sigebert of Wessex, and of Ethelred the Unready.

A great constitutional advance, however, was made in the days of Edward II. After the fall of Lancaster, in 1322, it was enacted in Parliament, with a view to preventing combinations of the nobility, that "what concerns the whole realm must be treated in a full Parliament," a principle which gave the representatives of counties, cities, and boroughs a full share of legislation.

Under Edward III. Parliament made great strides. This is due mainly to the separation of Parliament into two

houses, and to the necessities caused by the king's wars with France.

In the year 1332 the knights of the shire are first definitely recorded as sitting apart from the lords and the clergy, and the next year they sat *with the citizens and burgesses* in a separate place. It is impossible to attach too much importance to this fact. On the Continent the members for the lower nobility sat with the nobles, while the clergy and members for towns sat each in a separate chamber, so that it was always possible to play off the different orders against one another. In England this was impossible, for not only did the nobles and clergy who came to Parliament sit in one house, but also the members for the lower nobility, as they were in theory, though practically elected in the county court by universal suffrage, sat with the citizens and burgesses, so that the orders were thoroughly mingled. Moreover, as the representatives of counties and towns were on an equal footing, the townsmen soon began to elect country gentlemen as their representatives, and the union between the counties and towns became still closer; and besides all this, as the younger sons of nobles were not nobles, they might sit in the House of Commons, and so not only do we find the younger brothers and younger sons of peers sitting in the Commons, but it was decided that even the eldest sons of peers, who would one day sit in their own right in the House of Lords, might be elected members of the Commons, a result which made a most complete union in feeling and interest between the Lords and the Commons. And yet again, as taxes soon came to be voted exclusively by the Commons for the whole of the laity, the House of Lords merely giving their assent to the grant, the chief control over the government came to lie in the House of Commons, and the Lords found that they could secure

their own power best by gaining influence in the House of Commons, which they did by getting their sons and dependents chosen, and by winning wherever they could control over the borough elections.

The next great source of the power of Parliament, during the reign of Edward III., was the war with France. To make war the king must have money, and to do so the Parliament must be kept in a good temper. Accordingly we find Edward consulting his Parliament on every occasion, asking their advice, and submitting his plans to their approval. On the other hand, the House of Commons, which fifty years before had not even existed, meddled with everything. Hardly any matter which they deal with at the present time was untouched by them; indeed, they interfered too much, and their dealings with matters of trade, finance and wages, did a great deal more harm than good. Still, all this interference increased the importance of Parliament and the consideration in which it was held in the country.

The attention of Parliament was, however, directed mainly to three points. They wished not only to vote the taxes, but to control the expenditure; and they desired to control the appointment of the king's ministers and to have some means of punishing them if they did not keep the law.

The first chance of securing these occurred in 1341. In that year the king was thoroughly discontented with the administration, for though large taxes had been granted to him, he was still short of supplies. So he suddenly came back from Flanders, accused John Stratford, Archbishop of Canterbury, the Treasurer, of wasting his money, and ordered him to appear before the Court of Exchequer. The lords, however, insisted that a peer must be tried by his peers,



and therefore backed up the Archbishop in his refusal to appear before the Exchequer Court, and the right of a peer to be tried by his peers was once for all granted. Meanwhile the Parliament had been making their advantage out of Edward's difficulty, and had wrung from the king the following concessions :—First, that the accounts should be audited by auditors chosen in Parliament ; this gave them complete control over both taxation and expenditure. Second, that ministers were to be appointed by consultation between the king and his lords, and that when named they were to be sworn before Parliament to keep the law ; this gave them control over the appointment of ministers, and involved the idea of ministerial responsibility. Third, that at the beginning of each Parliament ministers were to resign their offices into the king's hands, and be compelled to answer any complaints. Had these gains been permanent, Parliament would have got a full share in the government of the country ; but they were not, for the very same year Edward repudiated the concessions which he had made. They were not, however, wasted, for they gave an ideal at which to aim, and it was not long before they were practically enforced.

For a time, however, Parliament gave its attention to getting rid of the king's clerical advisers, partly because they were not amenable to the law, and partly because there was growing up in the country a strong dislike to the clergy. In this effort Parliament for a time succeeded. In 1340, Robert Bouchier became the first lay chancellor, and in 1371, the clerical advisers, at the head of whom was the excellent William of Wykeham, were dismissed, and a lay administration under John of Gaunt took its place. But this ministry in turn became unpopular, some of its members were engaged in corrupt practices, some were too friendly

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with Alice Perrers, the king's mistress, the war abroad took a disastrous turn, so in 1376, a Parliament which acquired the title of good, and which was lead by the Black Prince, the Duke of Clarence, and William of Wykeham, attacked John of Gaunt and his friends. For this attack they made use of a new weapon, impeachment. In an impeachment the House of Commons prosecute a man before the House of Lords, who act both as jury and judges, give the verdict and pronounce the sentence. In this way the Commons proceeded against Lords Latimer and Neville, and Alice Perrers, who were severely punished for mal-administration and corruption. The discovery of this new weapon made it practically possible to force ministers to keep the law, and made them really responsible to Parliament, and its discovery was the last step in Parliamentary progress which was made under Edward III.

## CHAPTER VIII.

### POWERS OF MEDIEVAL PARLIAMENT AT THEIR HEIGHT.

IN the last chapter we followed the course of parliamentary history during the reigns of the three Edwards. During this period, the power of the national assembly steadily grew, Parliament began to sit regularly, was divided into two houses, obtained control over taxation and expenditure, impeached the king's ministers, secured a right to a full share in legislation for the Commons, and indeed interfered in every branch of government. To a casual observer it might seem that the House of Commons, at the death of Edward III., had secured a position which made it almost the equal of that of the present day. In reality, however, its power rested upon no secure foundation, but upon a very nice balance between several opposing forces, and the equilibrium was so unstable that a very slight shock was sufficient to bring the whole edifice to the ground.

It was seen that the old nobles, who after the Conquest had been defying the power of the crown and endeavouring to set up a feudalism of their own, had been beaten by the alliance of Henry II. with the clergy, the towns, and the official nobility; that the wickedness of John dissolved this alliance, and forced the nobles to ally themselves with the Church and the people, and, while they still preserved

their hostility to the crown, to appear as the champions of the nation. This new alliance lasted nearly to the end of the fourteenth century, and it was due to it that Parliament was forced into vigour, because it formed the readiest weapon for the nobles to use against the king. But it was the force of the nobles in the background which compelled the king to yield to the demands of Parliament, and, the support of the nobles once removed, the Commons had no power of their own to stand alone. To break the alliance between the nobles and the Commons, was naturally the object of the king, and the first step towards this end was taken by Edward III.

From natural causes, however, the position of the nobles had changed a great deal in the three hundred years which had passed since the Conquest. In the first place, William the Conqueror's plan of making the nobles weak by scattering their estates all over the country, had broken down, for in process of time, by marriage and inheritance, a great many rectifications of frontier had been effected, and the power of the nobles was much more consolidated than it had been, and also collected in fewer hands. Moreover, the nobles had become more wealthy. Up to 1347, England had been for a long time an agricultural country, but the Black Death killed so many labourers, that the landowners found it utterly impossible, in spite of the assistance of Parliament, to keep down wages at the old level, and equally impossible to bring back again their emancipated labourers into the condition of serfs. They, therefore, took to sheep farming, and, as they found in Flanders a ready market for their wool, rapidly grew rich. Again, since the institution of scutage the feudal organization had fallen into decay, and for a time the nobles grew weaker; but it had been replaced by an institution still more dangerous. Edward III. had got

troops for his French wars by giving authority to the nobles to collect regiments of soldiers whom the king paid through them, a plan which furnished him with an excellent army. The nobles, however, when at home, found means by their new wealth to keep the services of some of these men as retainers, who practically formed a little standing army far more dangerous than the old feudal levy, for they were always ready at hand. These retainers were not feudal at all. The feudal vassal held land from the lord on condition of fighting for him; the retainer wore the lord's livery on the same condition, and as he was ready for service on a moment's notice, was evidently very much more dangerous to society. The castles, too, were grown both strong and numerous, and were held for the most part by the nobility. These several causes all acting together had produced a small but very powerful band of wealthy nobles, and so long as they were ranged on the side of Parliament, its position was strong enough. But Edward III. devised a scheme for bringing over the power of the nobles to the side of the crown. He had a numerous family of sons, and he proposed to provide for them by marrying them to the heiresses of great nobles, just as the French kings provided for their children by the grant of appanages.

In pursuance of this scheme Edward the Black Prince married Joan of Kent, the heiress of the estates of Richard of Cornwall, the brother of Henry III.; Lionel Duke of Clarence married the heiress of the De Burghs; John of Gaunt married Blanche, the daughter and heiress of Henry Duke of Lancaster, and for his benefit Lancaster was made a county palatine. Bohun Earl of Hereford left two daughters, one of whom married Thomas of Gloucester, the youngest son of Edward III.; the other, Henry, son of John of Gaunt and Blanche of Lancaster. Edmund Duke

of York was an exception, and married a daughter of Pedro the Cruel. In this way Edward expected to win over to the interest of the crown a great share of the wealth and power which had formerly been arrayed against it. For a time, however, his plan was not completely successful, because of the jealousy between the Black Prince and the Duke of Clarence and John of Gaunt, and the reforms of the good Parliament were carried by the support of the two elder brothers.

On the death of Edward III. this jealousy was continued. Richard II. had been brought much into notice during the reign of his grandfather, and the same party which had supported the good Parliament supported him, and secured for the Parliament a strong hold over the administration, in order to keep out John of Gaunt. As Richard was only eleven years of age, a council was formed to carry on the government ; and it is from the appointment of this council that we can trace the continual growth of the power of that great institution which formed the executive government under the Tudors. From this council John of Gaunt and the king's uncles were excluded ; its members were appointed by Parliament, their acts were controlled by Parliament, which not only voted taxes for special purposes, but also appointed officers of its own to receive them and see that they were diverted into no other channel, and at the same time, by frequent discussion, kept under its own eye the acts of the council, and in this way Parliament exercised greater power than it had ever before done.

Soon, however, it grew tired of its own council. One of the most important ministers was Michael de la Pole Earl of Suffolk, son of a merchant of Kingston-upon-Hull, who had made himself useful by advancing money to Edward III. for the French wars. Suffolk himself was an

able man, and he was strongly of opinion that the nation needed rest after her long wars, and was, therefore, in favour of peace. This was contrary to the views of the nobles, who were desirous of continuing the war which gave them riches, power and excitement, and therefore made an attack upon him. Richard, though a lad, refused to remove him from the council, and the Commons, upon that, sent for the Act for the deposition of Edward II., and had it read before them. This frightened Richard, and Suffolk was removed, but it made the nobles his deadly enemies. The king was also strongly swayed by another member of the council, De Vere, a nobleman of the highest birth, who could not for a moment be accused of being an upstart. Against him and Suffolk a combination of nobles was formed, consisting of the Duke of Gloucester, and the Earls of Arundel, Derby, Nottingham, and Warwick. When Suffolk was dismissed they got Parliament to appoint a new council; and when Richard took an opinion from the judges that this council was illegal, they took up arms, defeated the king's friends, and by execution and banishment thoroughly broke up his party, and took the power into their own hands. Shortly afterwards Richard came of age, dismissed his advisers, and for a time ruled well; but, determining to crush the nobles, he won over Derby and Nottingham to his side, secured a Parliament favourable to himself, attacked the lords appellant with their own weapon, impeachment, murdered Gloucester before trial, beheaded Arundel, banished Warwick, and in his turn broke up the party of the lords appellant. He then called a Parliament at Shrewsbury.

No sooner were the nobles removed than the Commons were powerless to resist the king. The Parliament of Shrewsbury was forced to grant taxes for life, so giving up its control over the purse, and to delegate its powers

into the hands of a committee of eighteen members who were all king's friends, and at the same time to annul the Acts of the Parliament which had condemned Suffolk and De Vere. Thus in a moment, when the forces of the nobles had gone, or were ranged at the king's side, the power of Parliament vanished, its most important privileges were given up, and it became thoroughly discredited.

The king used his new power in the most arbitrary manner. He forced the parliamentary committee to determine cases and to enact laws, and made every tenant of the crown swear to recognize the legality of its acts and to oppose any attempt to alter or revoke them. He exacted forced loans, sold pardons, put seventeen counties in outlawry, interfered with justice, and, by a manifest breach of right, exiled at once the two remaining great nobles, Henry of Derby, now Earl of Hereford, and Nottingham, Earl of Norfolk. The result was a tremendous reaction. Richard became thoroughly unpopular. The nobles were disgusted with his high-handed and unjust conduct to themselves; the clergy disliked him because his court was a centre of Lollardism, and because he had banished the Archbishop of Canterbury, Arundel's brother; the people hated the new taxes, and the oppressions to which they were exposed. Taking advantage of this feeling, which united the kingdom against Richard, as it had before been united against John, Henry of Hereford, who had been deprived of the estates of his father, John of Gaunt, by a flagrant breach of faith, put himself at the head of the movement at a moment when Richard was in Ireland, was joined by the whole nation, and Richard came back only to find himself a prisoner. A Parliament was summoned, which received a resignation signed by Richard, and on the other hand drew up an act of deposition which recited Richard's misdeeds, and



the throne was declared vacant. It was clearly in the power of Lancaster to seize it by force, but he gave colour to his claim by declaring that, as the descendant of Edmund Crouchback, generally believed to be the younger brother of Edward I., but whom he stated to be the elder brother, he had a better claim than the other descendants of Edward III. To this plea no answer was forthcoming, and Richard passed to the dungeon and to death, while Lancaster ascended the throne as Henry IV.

The reign of Richard II. is very instructive. It shows us in the first place that the House of Commons had as yet no intrinsic power, but could be used at will by either king or nobles as one or other was in the ascendant. Secondly, that the nation was still ready to resist arbitrary government so long as its natural leaders were prepared to show the way, but that if the power of the nobles were overthrown the nation would be helpless to resist the king; and lastly, that the arrangement of Edward III., while it strengthened the royal family as against the country, had prepared the way for a dynastic struggle, whenever, as had now happened, a doubt was cast upon the claim of the actual occupant to possess the throne.

In the reign of Richard II. Parliament was used first by the king and then by the nobles; Henry IV. used Parliament as a check upon the nobles. His position from the first was precarious; for his title was bad, the combination which had put him on the throne was too sudden to last, and it was only by great skill that he could hope to keep his place. Still he had advantages. The clergy were thoroughly alienated from the Commons by the growth of Lollardism and the consequent attack upon the property of the Church; he held in his own hands all the property of the crown and the estates of the house of Lancaster, and had a large

band of retainers. His whole aim was to isolate the barons. For this purpose he kept on good terms with the Church, and burnt heretics at its desire ; for this, too, he fostered the power of the Commons. In appearance, at any rate, the Commons were very strong under Henry IV. The king changed his council in deference to their request ; he secured their elections from the interference of the sheriff ; he allowed them to make a regular audit of the expenditure of the taxes ; to them alone was secured the right to originate money grants. This policy made Henry's reign a success ; he kept the barons in check and discomfited the Percies and Mowbray, the son of his old antagonist Norfolk, when they rose against him ; he held the Church so firmly in awe that he dared, in open day, to execute Scrope, Archbishop of York, for treason, an act which two centuries before would have set the whole kingdom in a blaze ; and he handed down his kingdom in complete tranquillity to his son, Henry V.

Henry V.'s reign was remarkable, not for constitutional progress, but for martial triumphs. Indeed, under him Parliament began to lose power. The nobles were thoroughly on Henry's side, for they loved war and eagerly gave up domestic politics for foreign glory. The Commons were roused by the same spirit, and generously devoted the effects of the foreign priories to the support of the army. When Henry returned from Agincourt they voted him a large tax for life and so gave up the control of the purse, and it seemed as though victory was to be paid for by yielding up constitutional privilege.

With the accession of Henry VI. Parliament for a time regained its power. A minority was always favourable to constitutional rights, and no sooner was Henry V. dead, than Parliament found courage to set aside his will, and to appoint for the government of the country a council similar to that

of Richard II., of which Humphrey, Duke of Gloucester, the king's uncle, was chairman. For twenty years this council governed the country, and as from this time this body steadily began to usurp the powers of Parliament, it is worth while to examine the history of the Privy Council.

In the reign of Henry I. the *Curia Regis*, or ordinary council, was a body at once legislative, executive and judicial. In his reign the Court of Exchequer was formed from it as a permanent committee; under Henry II. the Court of King's Bench split off; and under John and Edward I. the Courts of Common Pleas and Chancery followed respectively. Meanwhile the old legislative power had been resumed by the national assembly or Parliament, so what remained to the king's council? The council was still composed of the body of the king's chief officials with others whom the king might call, and in theory there was nothing to show that it had lost any of its powers since the reign of Henry I. In practice, however, it constituted simply the council of the king's chief advisers and officers, and the exercise of its other powers was looked upon with extreme jealousy. It was this council which was replaced by that appointed by the Provisions of Oxford, or by the Lords Ordainers, and when the king was weak, the council secured for itself a real share in the government, when he was strong it became subordinate to his wishes. The ministry of Richard II., however, gave the council a much stronger position; from his reign the first minutes of the council which have come down to us date, and from this time its importance steadily grew. At that time it consisted of three bishops, nine peers, and seven commoners, and its members were regularly appointed for one year. Richard neglected the business of state and allowed things to fall into the hands of his council, and this was one of the chief causes of its importance.

Its members, again, were of a different class to the great nobles, who did not care to stay always in London or to follow the king. They were able men, but much under the king's influence; and the increase of their power was viewed with dislike and distrust by the great nobles who, as a class, could not for a moment vie with them in talent. Under Henry IV. the council continued its sittings, and Henry, Prince of Wales, for a time acted as its president, and when he ascended the throne, it managed English affairs during his absence in the wars; but from 1422 to 1441 the council really governed the country. By degrees the council was able to usurp the functions of Parliament. The proclamations of the king in council seriously interfered with the sole right of the Parliament to legislate. For although a proclamation was not supposed to enforce a new law, but only to call attention to an old one, or to put in operation one which was temporary in its application, the distinction was not very carefully kept up. Again, the council still acted as a court of appeal, and contrived to keep this right concurrently with the exercise of a similar right by the House of Lords.

As the council grew strong, Parliament grew weak. It was rarely summoned, for the Commons had foolishly granted to Henry VI. the tax of tonnage and poundage for life, so that, so long as the expenses were not excessive, there was no need to apply for more money. And when Parliament met, it was not so powerful as before. In 1430 the right to vote in the county courts was restricted to the forty shilling freeholders, which gave the executive a largely increased influence in the elections, and they also pushed their influence in the borough elections in every possible way. Edward III.'s plan had concentrated a great deal of the power of the nobles in the hands of the royal family, who

acted together against the nation, so long as they did not quarrel among themselves ; and the interest of the rest was mainly taken up with the war in France, so that even before the wars of the Roses broke out, Parliament had lost much of its power.

The wars of the Roses prevented it from regaining its position by the assistance of the nobles. In these wars, which, in their origin, were fought to gain the supremacy in the council, in their end, to secure the throne for the house of York, the high nobility were either killed off or impoverished, so that the house of York, on their accession to the throne, found themselves face to face with the people, without the interposition of a high-spirited, powerful and turbulent nobility. The Parliament, weakened before, and now deprived of its natural leaders, was utterly unable to act as a check on the crown, while the council, which had long been growing in importance and efficiency, became a ready instrument of government in the hands of an irresponsible sovereign.

The wars of the Roses and the consequent fall of the nobility were no doubt the chief reasons for the rise of the new despotism, but other causes worked in with them. The fifteenth century was a transition period, when Europe was passing from mediæval into modern times ; feudalism was coming to an end, and a new state of society was coming in ; a distinct advance in civilization was being made ; people felt that the order and security for life and property which had done well enough for crusaders and knights, were not now sufficient for the requirements of the world ; it was again a question of securing law and order, at any cost to individual liberty, and all classes were prepared to back up any sovereign who would secure them from a repetition of the wars of the Roses. It was this which made the policy of Edward IV. and Henry VII. practically the same.

for the conditions with which they had to deal were similar. Each found a people intent on gaining wealth and bent on getting the security needful for that end, a nobility which was either ruined or capable only of a spasmodic effort at self-assertion, a church thoroughly cowed by the Lollard movement, and therefore fearful of offending the king, and each saw in the Privy Council the ready instrument for carrying out his designs and for destroying what remained of independence.

The rule of a king, uncontrolled by nobles or Parliament, was a new feature in the history of our constitution, and this fact has been brought into notice by the name of the New Monarchy, which has been applied to the reign of the Yorkist and Tudor sovereigns. From the accession of Edward IV. to the defeat of the Spanish Armada in 1588, is a gap in our constitutional history; no progress was made, and we have merely to trace the causes of this state of things and the events which led to the fresh assertion of constitutional principles.

## CHAPTER IX.

### PARLIAMENT UNDER THE NEW MONARCHY.

IN the last chapter we traced the causes of the rise of the new monarchy in England, and saw that it was due in a special manner to the destruction of the nobility in the wars of the Roses, which deprived the people of their natural leaders, and to the growth of the Privy Council, which provided the king with a serviceable instrument of government. These causes, however, were special to England itself, but of the new despotism we had no monopoly, for it was to be seen all over Europe. In France, Louis XI., in Spain, Ferdinand and Isabella, in Florence, the Medici, were all aiming at the same result, and a movement so general must have had causes deeper than those which appeared to produce the change in any particular country.

The movement was one side of that which is known as the renaissance, or new birth, which changed the Europe of the crusades into the Europe of modern times. It is associated in our minds with the growth of art, with the Reformation, with the discovery of the new world; but constitutional history has most to do with the invention of gunpowder and the rise of commercial prosperity. Before these two forces the feudalism of mediæval Europe melted away. Commerce demanded a better security for its operations than was given by the rude misrule of the feudal baron. Gunpowder gave

the means of penetrating his armour and levelling his castle. It was no longer tolerable that nobles should have the power to summon their vassals and begin a private war to the utter destruction of peaceful business ; people demanded that men should not always need to sow and reap with their weapons beside them. It was this which caused a demand for better order, even if it needed for a time the giving up of some personal liberty. It was better to have a chance of enjoying one's own in peace, than to hold to some rather vague constitutional rights ; and so all over Europe we find the people ready to back up any one who would put down lawlessness, and ensure more peaceful times. The change, however, took a different form according to the special history of the country and the particular causes which gave the impulse. War was the great agent for increasing the royal powers. In England it was the wars of the Roses, in France the struggles with the English, in Spain the fightings with the Moors, which brought the king to the front. In Germany and Italy there was no national war, but there the Emperor was so weak that the towns took the lead ; and though in Germany they had very imperfect success and the robber knights held their own, in Italy, the home of the renaissance, the towns succeeded in getting rid of the nobles and in establishing a wonderful system of balance of power, long before such a thing was thought of in the west and north. But by the close of the fifteenth century, this system had had its day, and the Medici at Florence were taking the lead in destroying the old civic liberties.

In France and Spain, too, the history of the movement was different from that which is found in England. France, as we saw, was a typical feudal monarchy. In each of the provinces the counts or dukes had, side by side with the



king, been aiming at crushing the power of the lesser nobles in his own district, and at supporting the rights of the townsmen, so that when Charles VII. had roused national patriotism against the English, and when Louis XI. had succeeded by good luck and good management in taking the place in turn of the Duke of Burgundy, the Count of Anjou and others, and when Charles VIII. had married the heiress of Brittany, the kings of France found themselves suddenly raised from a position of great weakness, to be the all but despotic sovereigns of a magnificent kingdom.

Modern Spain is made up, on the other hand, not of the provinces of a feudal sovereignty like France, but of four independent kingdoms, Navarre, Aragon, Castile, and Leon, which were gradually united by marriage and conquest; while Portugal, though united for a time to Spain, is at present independent. These kingdoms grew into being, as Spain was gradually re-conquered bit by bit from the Moors. Navarre was never subject to the Moors; Aragon, Leon and Portugal were colonies pushed along the coast; Castile was an outpost driven like a wedge into the centre of the Peninsula. Leon and Castile were soon united by marriage; Ferdinand of Aragon and Isabella of Castile by their marriage added the third kingdom; and the unscrupulous bad faith of Ferdinand made him possessor of Navarre. National feeling was kept up by struggles against the Moors, which were brought to a successful termination by Ferdinand's conquest of Granada, and the fanaticism of the Spaniards was turned to useful account for despotism, by the establishment by Ferdinand, of the Spanish inquisition. At the close of the fifteenth century Ferdinand of Spain, Henry VII. of England, Louis XI. of France were the three magi of the West.

In England the most obvious cause of the new despotism

was the fall of the nobility. In the 31st year of Henry VI. the House of Lords contained five dukes, twelve earls, three viscounts and thirty-six barons, in all fifty-six lay peers. On the accession of Edward IV. there were one duke, four earls, one viscount, thirty-one barons, in all thirty-seven members. At the accession of Henry VII. there were two dukes, nine earls, two viscounts and sixteen barons, in all twenty-nine, and clearly many of these titles were new creations. These numbers speak volumes, and show, as was said by Mr. Bagehot, that in the wars of the Roses "the high nobility killed themselves out." But these figures alone do not fully represent the weakness of the nobility. Those families which had fought their way through, were wretchedly poor; the newly created nobles had little hold on the country, they were merely the creatures of the king. The Tudors, moreover, steadily aimed at keeping down the nobles. Henry VII., as we saw, found only twenty-nine, Edward VI. found forty-seven, while Mary left only forty-three.

Happily for England the fall of the nobility was not accompanied, as it was abroad, by the rise of a standing army. Henry VII. certainly possessed himself of a train of artillery, which was of most material service in putting down casual insurrections; but a force such as that wielded by Louis or Ferdinand was unknown in England till the days of Oliver Cromwell. This was due mainly to the freedom from the danger of foreign invasions which England enjoyed. Moreover, the comparative poverty of the English kings deprived them of the luxury of a standing army. Powerful as Henry VII. and Henry VIII. were, they were still in the main, dependent on Parliament for supplies; and insurrections such as that at Topcliffe under Henry VII., when the country people arose and slew the Earl Percy, the king's representative, and the resistance to the benevolence of

1525, showed Henry VII. and Wolsey that the purses of their subjects could not be trifled with with impunity, though the extraordinary Acts by which on two occasions Parliament released Henry VIII. from the obligation of paying his debts, showed how easily Parliament would bend to the king's will. Still even if the king had little force to control, there was no strong force to resist, and the physical checks which had controlled the early Edwards and Henrys had passed away.

The constitutional checks, however, remained unaltered. These were five, and are stated by Hallam to be :—

I. "The king could levy no sort of new tax upon the people, except by the grant of his Parliament, consisting as well of bishops and mitred abbots or lords spiritual, and of hereditary peers or temporal lords, who sat and voted promiscuously in the same chamber, as of representatives from the freeholders of each county, and from the burgesses of many towns and less considerable places, forming the lower or commons' house.

II. "The previous assent and authority of the same assembly were necessary for every new law, whether of a general or temporary nature.

III. "No man could be committed to prison, but by a legal warrant specifying his offence ; and by an usage nearly tantamount to constitutional right, he must be speedily brought to trial by means of a regular sessions of gaol delivery.

IV. "The fact of guilt or innocence on a criminal charge was determined in a public court, and in the county where the offence was alleged to have been committed, by a jury of twelve men, from whose unanimous verdict no appeal could be made. Civil rights, so far as they depended on questions of fact, were subject to the same decision.

V. "The officers and servants of the crown, violating the personal liberty or other right of the subject, might be sued in action for damages to be assessed by a jury, or, in some cases, were liable to criminal process ; nor could they plead any warrant or command in their justification, not even the direct order of the king."

Of these the first and second were thoroughly established, but the third, fourth, and fifth were much less valuable. They were very difficult to enforce ; and as time went on, the Tudor and Stuart sovereigns found it more and more easy to evade them, because they touched, as a rule, only individual citizens ; while to enforce a tax or to alter a law was likely to arouse the hostility and resistance of a class, if not of the nation.

On the other hand, the constitution gave the sovereign very great power. He practically appointed the sheriffs, and that gave him a representative in each county. He appointed the judges, and could displace them at any moment. Moreover, as the sheriffs named the jury, and the judges tried all cases, this gave the king an immense advantage in the law courts, and accounts at once for the fact that under both the Tudors and the Stuarts the law courts were scenes of the grossest injustice, wherever king and subject were the parties in the case. Again, the king had a perfect right to appoint as officers whom he would. The only way of getting rid of them was by impeachment, and there is no instance of this method being used between the impeachment of Suffolk, just before the wars of the Roses, and that of Lord Chancellor Bacon at the opening of the struggle between the Stuarts and the Commons. The chief ministers were the Chancellor and the Treasurer, for the Justiciar had long before subsided into a mere law officer. The Chancellor, next to the king, was at the head of affairs. Usually some

great churchman was appointed, for the sovereigns were most careful to keep this office out of the hands of the nobility, and in Cardinal Morton and Cardinal Wolsey, Henry VII. and Henry VIII. found capable ministers who were willing to use their ability, solely to further the ends of the crown. Then came the Treasurer, usually a cleric, but as yet decidedly inferior in importance to the Chancellor.

The Chancellor was at the head of the Court of Equity, the judges at the head of the Courts of Common Law; and so, with the judicial and executive administrations thoroughly under his control, there was really no check on the king except the want of money. The king's revenue was derived from grants of Parliament, crown lands, feudal dues, fines and forfeitures levied in the law courts, and other rights such as treasure-trove which he possessed as lord of the land. Still, however, the revenue was by no means large, and an attempt to increase it always formed part of the royal policy.

The actual history of the reigns of Edward IV. and his immediate successors is mainly concerned with the efforts of the sovereigns to secure themselves on the throne, and to strengthen the hold which they had over the country.

Edward IV.'s great difficulty was with Warwick. The kingmaker was the last of the great feudal nobles; he had put Edward on the throne, but Edward had no intention of submitting himself to his authority. To balance the power of the earl, Edward supported the Woodvilles; to sow dissension in the royal family, Warwick supported Clarence against Edward. For a time Warwick actually got Edward into his power, but was forced to release him, and Warwick and Clarence soon afterwards left the country and allied themselves to Margaret, the exiled wife of Henry VI. By her aid Edward was for a time dethroned; but he returned,

and the battles of Barnet and Tewkesbury crushed Warwick, utterly put down the Lancastrians, and left Edward time to consolidate his power. In practice, Edward was a believer in the motto "Everything for the people, nothing by the people." He laid himself out to be thoroughly popular, mixed freely with his subjects, sat on the King's Bench himself, and did all he could to gain a character for kindness to every one but a noble. He was on the road to complete success, and had already made himself pretty well independent of Parliament, which he had summoned only once for eight years, when his early death for a time plunged the kingdom into disorder. Three parties struggled for power: the Woodvilles, the new nobles, headed by Hastings, the old nobility, headed by Buckingham. Richard of Gloucester played off these parties against one another and won the crown, only, however, to cause a general combination of his crushed antagonists and the ruin of his cause at Bosworth field.

Henry VII. pursued the same policy as Edward IV. His claim to the crown was more than doubtful, and it required all his astuteness to keep what his sword had won. He obtained from Parliament an act which declared that no subject could be punished for service done for a king in actual possession of the crown. To get a constitutional acknowledgment of his title, he had a law passed by Parliament which declared the succession to rest in him and his heirs, and to get the sanction of the Church he obtained from the Pope a bull to the same effect, and by a system of matrimonial alliances he managed to put himself on an equal footing with the other sovereigns of Europe, and to gloss over the fact that his connection with the house of Lancaster was derived from an illegitimate son of John of Gaunt, and that he was merely the husband of the true heiress of the

throne. Conspiracy after conspiracy was raised against him, but through all his difficulties, he steadily kept his eye upon three points : (1) to reduce the power of the nobility ; (2) to obtain a court of law independent of popular feeling ; (3) to get a revenue independent of Parliament.

He crushed the nobles in three ways. First, he beheaded them. Secondly, he impoverished them. Third, he deprived them of their retainers. The retainers had been the great source of the troubles of the wars of the Roses, for they had formed the armies which had fought the battles. Henry's Parliament readily passed a law to forbid them, and he himself enforced the law with rigour ; and by punishing those nobles who infringed it, by enormous fines, he not only struck terror, but also took out of the hands of the transgressors the power of sinning again. Indirectly, too, the power of the nobles was weakened. The statute of fines which was originally intended to give a new security of title, to owners who had acquired estates during the late troubles, was, by somewhat irregular means, used by the lawyers as a means of breaking the entail, by which estates descended in unbroken succession from father to son, and thus enabling impoverished landowners to sell their estates. In this way large quantities of land passed into the hands of new men, who had no hereditary influence over their tenants, and who for a time at any rate devoted their attention mainly to making the most out of their land as a commercial speculation, and to building the comfortable houses, which have brought down to us the Tudor style.

To attain his second object, Henry set up the court which was afterwards known as the Court of Star Chamber. The exact position of this court is obscure, but it was practically a revival of the criminal jurisdiction of the Privy Council,

and in the reign of Henry VIII. it became merged in that body. The first object of the court was to keep in order "stout gentlemen of the North of England," who were inclined to defy the power of the sheriff in the county court; to check the sheriff himself if he showed symptoms of using his power against the king, his master; and generally to nip rebellion in the bud. The court could not inflict death, but only fines and imprisonment. Though created by the law, it violated the constitution by acting without a jury, and it contained the germ of great tyranny. At first, however, there is little doubt that it effected great good, for it secured peace and order, as no less powerful court could have done, and a great deal of the credit for the ease with which England passed through the stormy times of the Reformation is due to the Star Chamber. Sir Edward Coke said of it, "It is the most honourable court, our Parliament excepted, that is in the Christian world. In the judges of the same are the grandees of the realm: and they judge upon confession or deposition or witness. This court doth keep all England quiet."

The right of Parliament to control the purse had been handed down from time immemorial, and had been stated over and over again; but it had been finally decided by the *Confirmatio Cartarum* of Edward I. and the practice of succeeding reigns. Edward IV., however, contrived to get over the difficulty by asking his subjects for benevolences, or voluntary gifts, which it was very difficult to refuse, and, though this practice was forbidden by a law of Richard III., it was revived by Henry VII. His chancellor, Cardinal Morton, invented a form of argument which was capable of universal application. If a man lived extravagantly it showed, he said, that he had plenty to spare, if plainly, that he must have saved, and this convenient dilemma



went by the name of Morton's fork. Besides this irregular method, Henry used all the legal means in his power. He got Parliament to grant him a revenue for life and large sums on several occasions, all of which were exacted to the uttermost farthing; he collected the feudal dues to their full amount; he confiscated the property of rebellious barons, and he profited by the fines in the law courts. By these means, though not popular, he contrived to grow rich.

The reigns of Edward IV. and Henry VII. mark a new era. Singularly different in their manners and morals, these two able men were alike in their aims. Each of them pursued steadily the design of replacing the fabric of feudal monarchy by a despotism founded on the cupidity of the commercial classes, and so well did they succeed, both at home and abroad, that few monarchs ever ascended a throne with brighter prospects than their common descendant, Henry VIII.

## CHAPTER X.

### PARLIAMENT UNDER HENRY VIII.

BETWEEN the accession of Henry VIII. and the defeat of the Spanish Armada there is no continuous thread in the constitutional history. We are unable to trace the development of institutions ; but have to content ourselves with examining the government itself, and with watching the working of those causes which were steadily making the House of Commons a match for the monarchy. But during the first twenty years of the reign of Henry VIII. the House of Commons was at a very low ebb ; it was called at long intervals ; it did very little when it met ; and it was not till the struggle with the Papacy made Henry eager to gain the support of the whole nation, that the national assembly came again into prominence. It is very difficult, however, to say at any given time how far the Parliament was subservient and how far it was acting spontaneously in unison with the king. So easy it is to represent the same action in two different lights, that the reader is readily deceived. It is certain, however, that at the accession of Henry, Parliament had little opportunity of having a will of its own.

Henry's position was exceedingly strong : only one noble of the direct male line of the House of York was left—the Earl of Suffolk, and he was in prison, and on the point of

execution. The higher nobility had been killed or impoverished by Henry VII., while the Court of Star Chamber had secured the hold of the king over the people at large. To all these advantages Henry succeeded, and to these he added another, which his father never had—great personal popularity. He was young, good-looking, strong, an adept at all martial feats and at all manly exercises, and wherever he went he exercised a fascination which won him alike the hearts of men and women. Parliament readily granted the young monarch supplies, and by marrying his late brother's wife, Katharine of Aragon, he secured himself the advantage of the Spanish alliance, which comprehended the chief states of Europe who were opposed to France. Soon after his accession he secured for himself a most excellent minister in the person of Wolsey.

Thomas Wolsey was one of the ablest ministers who ever served a king. He was a churchman, sprung from the ranks of the people, but endowed with all the riches of learning; very clever, very ambitious, and a thorough friend to Henry. His policy followed two distinct lines; (1) to increase the power of the crown, (2) to reform the power of the Church. In the former he merely carried on the policy of Henry VII.; but in the latter, he was obliged to deal with a wholly new set of circumstances. He lived at the time when Luther was setting on foot the Reformation in Germany. Though we know this movement as the Reformation, it was only one of a series. Again and again parties of reform had at moments of decay sprung up in the Church. The monks of Clugny in the eleventh century, the Franciscans and Dominicans in the thirteenth, had equally been reformers in their way, but they differed from those of the sixteenth century in this, that in their case the Popes had set themselves at the head of the movement and had

adopted it, and by doing so had prevented the danger of a schism. Had the Pope of Luther's time treated him as Innocent III. treated the Franciscans, the course of history might have been changed, but Leo X. had nothing of Innocent III. or of Gregory VII. in his character, and so he was incapable of acting as they had done. Now, it is to the credit of Wolsey that he seems to have distinctly seen the danger, and, had he been elected Pope, he might possibly have played the part of the German Popes of the eleventh century, and raised the Pontiff from being a mere Italian Prince to be the true head of Latin Christianity. Throughout his life, Wolsey distinctly recognized the necessity of a reformation, and it was an ambition which was something more than a wish for mere personal aggrandizement, which urged him to try for the Papacy. The abuses of the clergy had raised the Lollards in England, and though the Lollards had failed, the notion of reform was not extinct, and Henry VII. had gone so far as to get a bull from the Pope giving him authority to inspect the monasteries. This plan Wolsey proposed to carry out, and to couple the extinction of the useless monasteries with the erection of schools and colleges, which should supply the demands of the new learning. To give himself the necessary authority for this, Wolsey, with the king's consent, got from the Pope the appointment of papal legate. This had a most important effect on subsequent events; for as Wolsey was both chancellor and papal legate he combined in his own person the highest civil and ecclesiastical power; so that when, after the Reformation, Cromwell became both chancellor and vicar-general, though he derived his authority from the king and not from the Pope, as far as the people were concerned, no change was made in ecclesiastical authority.

In home policy, Wolsey's attention was chiefly devoted to supplying money for the king's expenses. Henry VIII. required a larger income than Henry VII., for his court was more extravagant, and by attempting an energetic foreign policy he involved himself in numerous wars. To supply his deficiencies, Wolsey resorted to grants of Parliament, to benevolences, and to forced loans. As a rule he met with little difficulty in getting what he wanted, but on two notable occasions he met with resistance, and was forced to be satisfied with defeat. In the year 1523, Wolsey, though not a member of the Commons' House, demanded in person a grant of £400,000; but mainly by the boldness of Sir Thomas More he was obliged to withdraw while the question was discussed; and even then, after a debate of fifteen or sixteen days, a smaller sum only was granted, and that was spread over a period of four years. Again, in 1525, Henry attempted systematically to collect a forced loan over the whole kingdom, but his officers everywhere met with resistance, and he was obliged to give up the attempt. On the other hand, Parliament twice absolved the king from his debts, and even ordered that those who had inadvertently been paid, should refund the money, but this proceeding was regarded as altogether exceptional.

The fall of Wolsey coincided with the first appearance of symptoms of a revival of parliamentary activity. The Parliament which met at his fall sat for no less than seven sessions, did an immense amount of work, and gained a great prominence in the eyes of the nation. From that time the House of Commons has never gone back, but has steadily won its way to its present position.

The gain was due in the main to three causes, all of which grew more or less directly out of the Reformation.

The first of these was the longer time during which Par-

liament sat. Up to 1529 the Parliament had usually been hurriedly summoned, voted the supplies which were needed, or passed any special law which was thought necessary, and then been dissolved at once. It had been a casual assembly called together to despatch special business. But the Parliament of 1529, which was merely prorogued from time to time, and was not dissolved till 1536, had time to acquire a corporate character and feeling, and with these the self-respect of the members and their importance in the eyes of the nation steadily increased. The second was the prominence given to Parliament by Henry's struggle with the Pope, and by the difficulties which arose as to the succession. No Parliament of modern times effected more in seven years than the Parliament which met in 1529. It passed a series of Acts which completely separated England from Rome; it reformed the English clergy; it settled and unsettled the succession to the throne; and it interfered in many other departments of social and political life. Little as Henry VIII. was controlled by his Parliament, by using it as he did, he polished up a rusty tool which formed a dangerous weapon in the hands of a less skilful craftsman. The third cause was the fall of the monasteries, which had an immense constitutional importance. When Henry VIII. came to the throne the House of Lords was made up of eighty-four peers. Of these thirty-six were lay, the rest, including twenty-one archbishops and bishops, twenty-six abbots and priors, and the master of the Knights of St. John, were spiritual peers, and numbered forty-eight; so that the spiritual peers were in a majority of twelve. At the accession of Edward VI. there were forty-seven lay peers and only twenty-seven spiritual peers, so that the numbers were more than reversed. This was due to the disappearance of all the spiritual peers but the archbishops and

bishops. The result of this change was to thoroughly alter the character of the House. Up to this time the spiritual peers, all of whom were nominated more or less directly by the king, had, since the accession of the house of Lancaster, been thoroughly at his disposal; and the fact that he had induced the House of Lords to pass the reforming statutes, shows his power. But when the spiritual peers were reduced to a minority, the nobles were in a position to act with greater freedom. For a time the crown, through the newly appointed peers, was able to hold its own, but symptoms of resistance seem to have appeared in the Lords earlier than in the Commons, for in the reign of Mary an important statute against heretics passed the Commons, but was thrown out by the Lords.

But, besides this constitutional change, the Reformation narrowly escaped from completely changing the attitude of the king to Parliament itself. The dissolution of the monasteries and the transference of their property to the crown gave the English sovereign the best chance he ever had of making himself independent of parliamentary control, by securing to himself an immense and permanent income. With the wealth of the monks in his hands the king need no longer have come to Parliament to ask for supplies. Oddly enough this was looked upon by the common people as the great good which was to come from the dissolution; they fondly imagined that there would be no more taxes, and sore was their disappointment when they found that the tax-gatherer called perhaps more frequently than before. But in the long run it was a good thing for England that such was the case. Had the chance come to Louis XI. or even to Henry VII., the wealth would have been carefully secured, but Henry VIII. allowed it to be dissipated partly in presents to his friends, partly in

grants to enemies, and partly by huge thefts made by the sequestrators of the property. The Reformation gained what the king lost : these grants secured the upper classes for the Reformation, and the forty thousand families who in the reign of Mary are said to have been interested in the abbey lands, formed the strongest barrier between England and Rome. Henry's action succeeded in identifying the whole nation with the cause of separation from Rome ; he acted not as a Protestant but as an Englishman ; and when he sent to death on one hurdle a Protestant and a Catholic, the one for denying transubstantiation, the other for denying the royal supremacy, he probably exactly represented the views of the ordinary Englishman of his day. Under these circumstances the Parliament, which on the whole represented the nation fairly enough, was thoroughly prepared to back him up in the policy which he thought necessary for success, and was therefore ready to grant him privileges which it would have denied to a less popular sovereign.

In the first place, it passed an Act giving to his proclamations the force of law. In form this was a surrender of right, but in fact it was an assertion that a proclamation of the king had not the force of law without the authority of Parliament, and as the Act ceased to operate at Henry's death, it left the constitutional question more certain than before. Secondly, Parliament allowed Henry to leave the crown by will. This was a much more startling concession, but practically it made little difference in subsequent events, and it certainly was much better that such an arrangement should be sanctioned by Act of Parliament, than that it should be usurped by the king's own authority. In spite of this apparent giving up of a right, the Parliament of Henry VIII. again and again was called upon to settle the question of the legitimacy of Henry's



children, so that the right of Parliament to regulate the succession was not likely to fall out of use from want of exercise.

On the whole then the reign of Henry VIII. was a critical time in the history of Parliament. Though the Houses had not much control over the administration of the king, they were for various causes growing in importance; by the continual exercise of their functions, they prevented them from falling into decay, while the measures they passed were preparing them for a period of greater independence under sovereigns of a less iron will than that of Henry VIII.

With the accession of Edward VI. the interest turns from the Parliament to the council. The minority of Edward VI., like those of Richard II. and Henry VI., was a period of great importance in the history of the Privy Council. It had now become a regular organized body, whose members were named the Lords of the Council, and held in their hands the administration of the State. These were appointed by the sovereign without any regard to the wishes of Parliament, and the council of Edward VI. was nominated by the will of Henry VIII., who had arranged for his son's minority, just as Henry V. had, without parliamentary sanction, attempted to do for that of Henry VI. The council consisted of forty members of whom twenty-two were commoners, in itself a very striking circumstance. For business purposes it was divided into three committees; (1) for calling in forfeits, (2) the committee of State, which answers in a certain degree to the present cabinet, who dealt with the higher matters of policy, (3) the committee for the defence of the country. To each committee was attached a secretary who was rapidly becoming important. It is a matter of everyday experience that the permanent

secretary of any body always tends to become of more importance than the more honourable members. He is always there, and knows what has been done before, so that he is a centre of information ; and if he has any brains at all, he must become a person of the first consequence. It is by this simple process that the three secretaries of the Privy Council, have as Secretaries of State far outstripped the great lords of the council, until the great lords themselves have become glad to take the place of those who were nominally their inferiors. The increase in the power of the Tudor kings made the council a great deal more powerful than it had been when it appeared before. It wielded all the new power of the crown. In former councils the majority of the members had been nobles or prelates who were themselves powerful, but after the Reformation, few prelates appear, and the chief power fell into the hands of commoners or new men who had been lately ennobled. The council had several sub-committees. One for Wales, sat at Ludlow, and had under its jurisdiction Wales and the March counties ; another, the council of the north, was established at York, after the Pilgrimage of Grace, and looked after the six northern counties.

By the year 1526 the old Court of Star Chamber created by Henry VII., had become merged in the general body of the council, which thus sat as a court of criminal jurisdiction and was able itself to punish those who infringed its numerous proclamations. These trials were carried on without a jury ; the accused was not always confronted with the witnesses ; he was himself examined upon oath, forced to criminate himself, and was often subjected to torture. Death could not be inflicted, but imprisonment was, and in those days imprisonment usually meant confinement in some noisome dungeon from which it was a mercy if you

came out alive. Whipping was frequently practised, and exposure in the pillory, branding or rowing in the galleys. There was no manner of question with which the Star Chamber did not interfere under Edward and Mary, and Elizabeth added to the powers of the Privy Council a fresh function by the creation of the Court of High Commission. This court played in ecclesiastical matters the part taken by the Star Chamber in civil affairs. It embodied in itself the powers which were supposed to be vested in the queen by the Act of Supremacy, and was constituted as a court by Act of Parliament in 1584. Its procedure was the same as that used by the Star Chamber, and it exercised despotic power over the clergy. When it was in working order, the control of the council over the nation was complete, and we need not wonder that in the Litany of the Church of England, the Lords of the Council are mentioned while Parliament was omitted.

Meanwhile the House of Commons was becoming steadily stronger. The addition of members for Wales under Henry VIII. had made it a better representative of the nation, and its activity under Edward VI. and Mary, and during the early years of Elizabeth, contributed to keep up its importance. But the first thing which shows the strength of Parliament was the wholesale creation of rotten boroughs. These boroughs were mere villages under the influence of the crown or of some noblemen in the court interest, who practically nominated the members. Cornwall was best represented, and that was because the stannary or tin courts there gave an effectual weapon for enforcing obedience to the royal will. But what would have been the good of this elaborate machinery if the House of Commons had been so subservient as it is often represented to have been? No! it was just because Parliament was becoming refractory,

because the court bills could not always be passed, that it was necessary to create new votes, and so the creation of rotten boroughs was the first compliment paid by the sovereign to the rising importance of Parliament, as the gunpowder plot was the first paid by the people. In the time of Henry VIII. sixteen boroughs were created, under Edward VI. twelve, under Mary eight, and by Elizabeth thirty, most of which were thoroughly rotten, but added two members each to the court party.

This increase in the power of Parliament was due partly to the special causes mentioned above, but almost as much to the great change which was passing over the whole nation. The centre of gravity of political power was falling. Formerly the nobility, but now the country gentry, were coming to be the most powerful body in the kingdom. The loss of retainers had broken the military power of the nobles ; but the revolution in agriculture, which under the Tudors changed England from an agricultural to a sheep farming country, had immensely increased the wealth of the gentry, and as they did not, like the nobles, flock to London to spend their incomes, they became thoroughly well-to-do ; and so we find that at the time of the civil war it was not so much the great nobles as the gentry, like Hampden and Cromwell, who put armies in the field and decided the fate of the kingdom. With this, too, came a spirit of independence and self-assertion. Men who had changed faiths and settled successions no longer looked upon themselves as the mere accessories of government, they aspired to play a nobler part ; and so the obsequious Parliament of Henry VII. became the murmuring Parliament of Mary, the grumbling Parliament of Elizabeth, and the rebellious Parliament of Charles I.

## CHAPTER XI.

### REVIVAL OF PARLIAMENTARY ACTIVITY.

THE strange absence of rebellion under the Tudors is worthy of notice. Two great risings only were made against the reform policy, the Pilgrimage of Grace, and the rebellion of the Nevilles and Percies in 1569. In each of these we have a rising of the type common under the Plantagenets where the great nobles raised the whole country side against the policy of the government, and specially protested against the place taken by villein and upstart men to the exclusion of the ancient nobles of the realm. The other rebellions such as those of Ket and Wyatt were for special causes, while that in Devonshire had no noble leader. This, however, shows on the whole both the popularity of the government and also the ease with which rebellion was suppressed, one part of the country being always ready to help to put down a rising in another, for the king could always rely on the goodwill of the majority of his subjects.

The same causes which had secured the popularity of Henry VIII. secured also that of his daughter Elizabeth. Her manners were as winning as his; she had the same happy knack of saying the right thing; and while her hand was heavy enough on a recalcitrant noble, the tradesman and the peasant always felt that he had a good friend at

court. Besides this, Elizabeth was most astute. Difficult as was the course she had to steer, she always contrived to keep clear of offending any important political body. She was economical even to a fault, and so, as the crown lands were much more extensive than at present, she avoided levying heavy taxes; she increased her revenue by enforcing the feudal dues, which fell most heavily on the great; and, as her foreign policy was generally popular, the nation, up to 1588, was prepared to overlook her trifling infringements of the constitution.

But at the same time the power of Parliament was growing; wealth was steadily spreading among its members, as was natural from the distribution of the well cultivated abbey lands, and the application of pasturage in the less fertile districts; and Parliament was strong enough to resist, long before it saw fit to use its strength. But Elizabeth herself knew well enough that the power to resist was there and she acted accordingly. On two points in particular the difference in view which existed between the queen and Parliament was apparent. These were the questions of the queen's marriage and the nomination of her successor. In each of these Elizabeth probably was able to see the whole question more distinctly than her subjects could. She perceived clearly that though marriage in the abstract was desirable enough, in the concrete it was sure to make her position more difficult. Various persons were proposed; but they were all more or less out of the question. She could not marry Philip of Spain without a dispensation from the Pope, and to have accepted that would have inferred her own illegitimacy; for if the Pope could grant a dispensation to a man to marry his deceased wife's sister, he could also grant a dispensation to a woman to marry her deceased husband's brother. It was almost as difficult for her to take

a Frenchman or a member of the House of Austria, for they were Catholics; Protestant German princes were not so common as they are at present, and to have married a subject would have exposed her to endless jealousy, and besides would have lowered her position as compared to Mary Queen of Scots. However, it was quite impossible to explain all this to Parliament, and so the subject was always a matter of quarrel.

If she would not marry, Parliament thought that the queen might at any rate name a successor; but the queen steadily refused to do anything of the kind. At Elizabeth's accession, the great mass of her subjects had been born and bred before the new doctrines of the Reformation had come in; they were, therefore, thorough Catholics in religion, though they had no love for the Pope. It could not, however, be expected that they would look with pleasure on the religious reforms which Elizabeth was carrying out; but they were cheered by the hope that Mary of Scotland, a devoted Catholic, would probably succeed to the throne. On the other hand the Protestants looked on Mary with horror, and hoped that something would turn up to prevent her succession; so to have declared Mary heir on the one hand, or one of the Suffolk family on the other, would have alienated a large body of the nation, and this Elizabeth never would do. At the end of her reign it was just as bad. Elizabeth wished to maintain the Church of England; but to have declared James of Scotland her heir would at that time have given a great impetus to the English Presbyterian movement which Elizabeth detested. Besides this, as time went on, Elizabeth became more and more averse to the mention of the subject, she knew well enough that an heir to the throne might make himself very dangerous to herself, and so she steadily turned a deaf ear to the entreaties of her subjects.

This policy, however, Parliament never would understand, and in 1566 and 1571 it opposed the queen's wishes on the subject. In the first of these years, the Commons spoke up boldly, and declared that the queen ought to marry or else to name a successor. No sovereign, said the lords, but one who was hateful to her subjects could be afraid of her successor. Elizabeth ordered the peers who spoke thus to be banished from her presence, and told the Commons to refrain from further speech upon the subject. Peter Wentworth asked if this order were not illegal. A debate of four days took place and then the Queen gave way.

In 1571 a struggle took place on the subject of Puritanism. Puritanism is rather a vague term. The nucleus of the Puritans were the Protestant clergy who left the Church in 1564 on the attempt of the high commission court to enforce the Act of Uniformity, but there were numbers of people inside the Church who were desirous of carrying out the principles of the Reformation to their logical conclusion, and who therefore, while remaining in the Church, were anxious to bring its principles and practice into closer conformity with their views. This party was very strong in the Commons, and again and again they tried to press their views on the court. In 1571 the Queen was thoroughly annoyed by this, and forbade Strickland, who had spoken strongly on the subject, to attend Parliament. This flagrant violation of the right of freedom of speech was not allowed to pass without notice. Peter Wentworth drew the attention of Parliament to the subject, and especially to the order of the queen forbidding Parliament to impeach Mary Queen of Scots, saying, "None is without fault, no, not even our gracious queen." Finally, Wentworth was imprisoned by the House, but released by the queen, and afterwards took a leading part in ecclesiastical questions. These instances are



sufficient to show that the House of Commons even during the earlier years of Elizabeth was not so servile a body as is sometimes supposed. Still the queen did not mince matters in her addresses to the House, and they were often warned not to meddle with matters that were too high for them.

The execution of Mary Queen of Scots in 1587, and the defeat of the Spanish Armada in the following year, removed the great danger which had hung over England since the accession of Elizabeth; and England, no longer breathlessly anxious for her very existence, was able to turn herself again to the securing of her constitutional freedom. The effort to do this lasted from 1588 to 1688, exactly one hundred years, and during that time the old liberties which had been won for a brief time under the Plantagenets, were regained, and such a stamp put upon them that they have never since been seriously infringed. This struggle for liberty forms the most exciting period of our constitutional history, and the opening struggle was ushered in by the cannon of the Armada.

It is a mistake to suppose that had James I. been a different character no struggle would have taken place. The contest had begun before his arrival, and his character, though it shaped the channel, had nothing to do with the incoming of the tide. It was while good Queen Bess still lived that Parliament began to 'murmur, and the first rustling of the coming storm was heard. As Elizabeth grew older her popularity declined. The war caused the levying of heavier taxes; the disasters in Ireland, the weary dragging out of the war with Spain, the fall of the popular Essex, cooled the enthusiasm of the nation, and the feeling of discontent showed itself, as was likely, in open rebellion on the part of the Parliament. The great grievances were the conditions of the Puritans and the weight of the monopolies.

The queen was determined to enforce her ideas of a state religion on the nation, so there was constant friction between the Court of High Commission and the low church or Puritan party. These difficulties were often before the notice of Parliament, and the Commons acquired the habit of looking upon themselves as the champions of the discontented reformers. But the quarrel about the monopolies has gained greater prominence, and has been handed down as the first open revolt of the Parliament against the court. These monopolies were granted to individuals either as court favourites or in return for a money payment, and gave the sole right of selling some article. The monopolists were able to sell at what price they thought they could make the largest profit, and the difference between this price and the market price which would have been fixed by free competition was an indirect tax on the consumers of the article. To the court they were a great source of revenue, and included salt, coal, leather, Latin grammars and other things. "Is not bread among the number?" asked an angry commoner. The question of the legality of these monopolies was raised in Parliament. At first the Commons proceeded by way of petition, but no notice being taken of their request, a bill was brought into the Parliament of 1601 to declare the monopolies illegal. For four days the courtiers made all the resistance in their power; but Elizabeth, finding that success was hopeless, gave way with a good grace, and sent word to the House that they should all be discontinued, and, though the promise was never literally carried out, the Commons, who had won a great constitutional battle, were for the time satisfied with their success.

Two other facts show the growing antagonism of the Commons to the court. In the course of her reign Elizabeth created sixty-two new boroughs, most of them rotten, and

she also did all in her power to influence the course of elections at other places in favour of the court candidates. If such was the attitude of Parliament and the court during the reign of good Queen Bess, it was only likely that open war would break out between Parliament and James I.

The struggle of which we have just traced the beginning was influenced on the death of Elizabeth by two new departures. (1) The more exact definition of the position of the Sovereign; (2) the change from the Tudors to the Stuarts. The notion of kingship in Europe was modified by the events of the sixteenth century; the idea of the feudal sovereign was replaced by those of a personal monarch and its opposite, the constitutional king. These ideas were in conflict; and as they were at the bottom of the struggle between the Stuarts and their Parliaments, it is well to inquire closely into their meaning. In mediæval times the whole theory of the organization of government and society was founded on the feudal system. It was a vast pyramid at the foot of which stood the serf, at the head the emperor. Europe still regarded itself as a part of the Roman empire, of which the emperor and the Pope represented the chief temporal and spiritual authorities. Under the emperor, stood the kings and their subjects; under the Pope, the archbishops and their clergy. This was the ideal; but it was not altogether recognized in its entirety. England always claimed to be independent of the empire, a sort of little empire in itself, and when Sigismund the emperor paid a visit to Henry V. it was expressly stipulated that he came as a visitor, and not as claiming any authority over the island. But at the close of the Middle Ages this theory was broken down by the logic of facts. The emperors lost their hold on Italy, and even on Germany, and became mere German princes, who were more-

over constantly out at the elbows and inspired no manner of respect; and though Charles V. gained a great name, his influence was due far more to his Spanish and Netherlandish subjects than to his rank as emperor. From another point of view the Reformation broke up the ecclesiastical side of the empire. England, Scotland, a great part of Germany, and Holland utterly threw over the papacy, and in this new state of things a fresh theory had to be discovered.

From the king's standpoint the view taken up was, that sovereigns owed their authority to divine right, and held their crowns from God himself without any interposition of the power of the emperor. This view made the sovereign owner of all his dominions in a sense unknown in feudal times, and enabled him to exchange, cede, or buy territory in a way that was never thought of by the feudal monarchs. His relation to the law was also changed. In old times the king was just as much bound by the customs of the realm as any of his subjects; but the sovereigns of the seventeenth century began to set up the theory that the laws of the land were subject to the wishes of the king, and that the privileges of the subject were the grant of the monarch, and could be revoked at his pleasure. The chief advocates of this theory were the students of the Roman law, which had always looked on the emperor as its supreme authority, and their views of the king's power were summed up as follows in "*Cowell's Interpreter*," a book published in 1610. In his definition of king, Cowell says: "He is above the law by his absolute power, and though for the better and equal course in making laws, he do admit the Three Estates into Council, yet this in divers learned men's opinion is not of constraint, but of his own benignity, or by reason of the promise made upon oath at the time of his coronation."

On the other hand a diametrically opposite view of the

king's position had grown out of the Reformation. The central ideas of the Reformation were the right of private judgment and the doctrine of justification by faith. These theories left no place for the mediation of the priest, or the interposition of authority, and therefore carried with them the tenet that all men were equal before God ; and if before God, much more, therefore, before men. By them the self-respect of men was increased, and an impulse given to political as well as religious independence. Looking at the theory of the king's power from this standpoint, it became clear that the king must have received his authority from the people, who had agreed for the sake of protection and better government to give up some of their rights to one man, who in return was bound to obey the laws. But this theory again was capable of two interpretations, or rather developments. Hobbes thought that the people, having once set up a king, had for ever given up their rights, and had no power to revoke them. On the other hand, Locke was of opinion that, if the king broke the fundamental contract, which must some time or other have been made, by violating the laws of the land, then the people might depose and punish the king. These views were, of course, not enunciated in form at the accession of James I., but they were in the air, in men's minds, and the course of the quarrel turned in a great measure on which of the two was adopted.

The question of the exact constitutional position of the English sovereign had never given much trouble to Henry VIII. or Elizabeth. So long as they had the reality of power, they did not care to investigate the basis upon which it rested, and gave themselves over to keep their realm in good order, and to secure themselves from the encroachments of the Pope like matter-of-fact English people as they

were. To keep clear of the Pope was, however, of the highest importance, and with regard to him they would have defined their position, if asked, to have been that of an absolute monarch, that is, one who was over all causes and all cases within their dominions supreme, and subject to no interference from any outside power, such as Pope or emperor. No Tudor would have claimed to be above the law. If it stood in their way, and the deed could be done quietly, they had no scruple about violating it, but they never thought of claiming to do so as a right.

In all these points James I. was utterly different. He was a pedantic student of political philosophy, and therefore was more careful of the theory of his position than of the maintenance of its dignity. He took the word absolute as meaning unrestrained by his subjects, and finally claimed as a right to be above the law. Such pretensions in a man of true kingly dignity would have been very trying, but in James I. they were absurd. The dignified aspect and kingly mien, which the Tudors had accustomed Englishmen to look for in a king, were ill calculated to fit the nation to reverence a slovenly glutton whose tongue was too large for his mouth; and the scholastic verbosity of James, his trickiness and meanness, disgusted a race who thought silence was golden, and reckoned a man by his deeds and not by his professions. Clever, undoubtedly, James was, a great deal cleverer, and even more far-sighted than many of his subjects, but disgusted as the nation was by his outward appearance and manners, these qualities went for very little, except perhaps with Sir Francis Bacon and the bench of bishops.

Until the death of Elizabeth very little was known in England of James I. The impression which he made on his arrival was not favourable. His train was filled with

needy Scots, who looked upon England as a land flowing with milk and honey. At Newark he caused a man who was caught picking pockets in the crowd to be hung on the spot without trial; and when a number of Puritan clergy presented a petition for some alterations in the Prayer-book and ceremonies of the Church, ten of their leaders were thrown into prison. By the time the new sovereign reached London, his subjects were well assured that if their liberties were to be secured they must be up and doing, and the struggle for constitutional freedom begun in real earnest.

To secure constitutional freedom it is necessary for the nation to have control directly or indirectly over the legislative or the making of laws, the executive or the carrying on of the nation's business, the judicial or the punishment of offenders, and the trial of cases between man and man. At this time, as we have seen, Parliament had secured the sole right of making laws, but this right was continually being encroached upon by the free use of proclamations by the king and council. It had no control over the appointment of the king's ministers—from the chancellor or treasurer to the sheriffs and magistrates—that is, over the executive. And in regard to the law courts the rights of the subjects were to a great extent illusory.

The courts of the kingdom could be divided into two branches, the Courts of Star Chamber and High Commission, and the ordinary courts of the land. Over the first of these the nation had no control; the judges were appointed by the king, and they acted without juries. In the ordinary courts where juries were employed it might seem that the rights of the subject were secured, but this was far from being the case. In the first place the king appointed and dismissed the judges solely at his own pleasure, so that they were completely under his thumb. Then, as the king in-

directly appointed the sheriffs, and the sheriff named the jury, there was sure to be, to say the least of it, a strong bias in the king's favour; and finally a man accused of a criminal offence was not furnished with a copy of the indictment before the day of trial, or a list of the witnesses against him; nor was he allowed to examine witnesses for the defence upon oath. What wonder was it that under the Stuarts the law courts, which should have been the protection of the subject, became merely the instruments of his oppression?

Against this array of power the only hope of the subject lay in the Parliament. Insurrection was utterly useless, and if Parliament could not hold its own there was no hope left for the nation. But there was no law to compel the king to summon a Parliament. So long as he could pay his way without additional taxes, or so long as he could get money in some way without the grant by Parliament, there was every probability that he would not summon one; and we owe it to the bad management of the Stuarts that they were compelled by their extravagance and thriftlessness to come as often as they did, face to face with the national assembly.



## CHAPTER XII.

### PARLIAMENT UNDER JAMES I.

DURING the reign of James I. Parliament was occupied in reasserting its privileges. The first act of James was a violation of the privileges of the Commons. He issued a proclamation in which he announced that it was his good pleasure that no one who held extreme views on religion or had been outlawed, was to be elected a member. This was a gross violation of freedom of election. Happily the county of Buckingham elected a gentleman of the name of Goodwin, an outlaw, so the action was not allowed to pass without question. According to the practice which had been used for a long time, the returns of the elections were sent not to the House of Commons but to the Court of Chancery. This court, in accordance with the king's unconstitutional proclamation, quashed the election of Goodwin, and ordered a second election to be held, in which another gentleman, named Fortescue, was chosen. To this the Commons demurred, insisted that the returns should go to them and not to the Court of Chancery, and James, finding them firm, yielded. A compromise was found, by which the elections of both Goodwin and Fortescue were set aside and a new member was chosen. From this time the right was never again disputed, and all questions which arose out of elections were referred to the Commons and to the Commons only

for decision. This beginning augured well for the further success of the Commons. To have secured control over their own elections gave them a firm basis on which to stand, and deprived the king of an excellent opening for getting rid of obnoxious members.

The next point was to secure the freedom of members' persons. The freedom of members of Parliament from arrest was very old. There was a law as old as the days of King Ethelbert that no man should hinder the members of the witan when summoned by the king, and this privilege had gradually developed till it was recognized that a member of Parliament could not be imprisoned at the suit of any private person or for any crime except treason, felony, or breach of the peace. To enforce this privilege was, however, more difficult. It had been violated several times by the Tudors and was in danger of falling into disuse. Happily the first Parliament of James I. insisted upon its rights, and in the case of a member named Shirley they vindicated the right of their members not to be arrested for debt.

Armed with these two privileges, of control over their own election and freedom from arrest, the Commons became very strong, and at once took a much higher position, in spite of all James' theories, than they had held under the Tudors. They became the recognized champions of the nation against the court, and also of the Puritans against the high churchmen and Catholics, a fact which was attested by the coupling of Parliament and king by the authors of the gunpowder plot.

During the earlier years of James a series of skirmishes took place between him and the Commons in which both sides practised the use of their weapons and gained confidence in themselves. Among these disputes was one about the union between England and Scotland. James was

desirous of seeing this done at once, but Parliament refused to do more than abolish the old border laws, and could not be persuaded to do what James wanted, with regard to the naturalization of his Scottish subjects. Again, Cecil, James' chief minister, wished to get rid of the old feudal dues, which were becoming most irksome in the new state of society, and offered to compromise the annoying rights of wardship, marriage, reliefs and so on for a fixed land tax of £200,000 a year. After a great deal of bargaining, the Commons agreed to this, but happening to go down for a recess the members changed their minds and refused to complete the contract, and the scheme fell to the ground. The plan was allowed to drop, and nothing more was effected till 1660. Again, the Commons were continually putting pressure on the king to enforce the severe laws against the Roman Catholics; the king on the other hand, who in this respect was more tolerant than his subjects, was constantly trying to find some means of uniting the Catholics to the English Church, and so was desirous of avoiding anything which would embitter the feelings of the two parties. In this way constant friction was kept up, and the Parliament, acting on their motto, "That the prerogatives of princes may easily and do grow, the privileges of subjects are at a standstill, and they may be maintained, but if lost are never regained," did all in their power to hold their ground.

But Parliament was not the only body which suffered in its privileges; the rights of subjects were also attacked. The purse of the nation was no longer inviolable. The constitutional right of the national assembly alone to grant taxes rested upon immemorial usage; the kings had never been able to establish any regular practice to the contrary; their attempts to do so had been regularly resisted, and finally the rights of the nation in this respect had been laid down in

the most positive and explicit manner in the confirmation of the charters of Edward I. For a time the kings had endeavoured in a spasmodic manner to get an irregular revenue in violation of this document, but these efforts ceased with Richard II., and from his time till the accession of Mary no attempt had been made to enforce a regular tax, though benevolences and forced loans, which did not differ materially in practice, had been sometimes exacted. Mary, however, levied a small customs duty without the consent of Parliament, and Elizabeth had raised a tax on sweet oils. These violations, however, though serious enough, were not systematic, and it was reserved for James I. to lay siege in regular form to the purses of his people. Tonnage and poundage, i.e. a tax of one shilling and sixpence to three shillings per ton on liquors, and of threepence to sixpence a pound on dry goods, imported or exported, had according to custom been granted to James I. for life, by his first Parliament. James proceeded to increase the tax by about five per cent., and in some cases by more. For instance, James was no smoker, and to try and put a stop to the objectionable practice he raised the tax on tobacco to six shillings and eightpence a pound. This rise in the customs duties was felt very much by the merchants, and one Bates, who traded with Turkey, refused to pay, and in 1608 he was brought before the Court of Exchequer to answer for his conduct. Now the question of customs duties had always been held to differ somewhat from that of other taxes. Trade, since it arose out of our relation to foreign countries, was supposed to have something to do with foreign affairs, which were under the king's own management, and so the control over customs had been the last to be won, and was now the first to be disputed. The judges who sat in the Exchequer Court being appointed by the king, were, there-

fore, in his interest, and decided that the king's power is double, ordinary and absolute, that the absolute power is used by the king in respect of foreign affairs, and that, as customs arise out of foreign commerce, the king may regulate them as he pleases. This decided the question in the king's favour, and the judges also declared that "a law passed in one king's reign did not bind his successor," a theory which was subversive of all parliamentary power and made James I., if he chose to be so, as despotic as William the Conqueror. Delighted with this decision, James issued a book of rates containing a completely new and increased scale of customs, and insisted upon their being paid.

This decision spread the greatest alarm throughout all classes, and the Parliament which sat in 1610 reflected the feelings of the nation. The gentry were fearful that their lands would be taxed, while the common law lawyers looked with horror upon a decision which set precedent at defiance. The lawyers were always divided into two parties—the common law lawyers, whose system of law rested upon precedent and ancient prescription, were stoutly in favour of parliamentary tradition and privilege, while on the other hand the Chancery lawyers, who got their ideas from the maxims of the Roman law, were inclined to value the decisions of the crown to the exclusion of the traditions of the court, and to introduce into English courts of justice the Roman theory that "that is law which pleases the king." This quarrel between the lawyers was at this time embittered by a direct struggle between the common law courts and the Court of Chancery as to who should try cases which arose out of trusts, and so we find that, as a rule, the Chancery lawyers, headed by Sir Francis Bacon, favoured the king, the common law lawyers, headed by Sir Edward Coke, favoured the Parliament. Under these circumstances the

lawyers of the Commons met the decision of the judges in Bates' case by a demand that the precedents of the House should be searched, and they had no difficulty in getting together a formidable array of instances in which the right of taxation had been allowed to lie wholly in the Houses of Parliament, and especially in the House of Commons. This evidence, however, was not received with favour by the Upper House and was by it rejected. Meanwhile the bargaining about the commutation of feudal dues had proved a failure and Parliament was dissolved.

There is a marked contrast between the first and second halves of James' reign. So long as Cecil, Lord Salisbury, lived, the traditions of Elizabeth's time were fairly maintained; but after his death in 1612, an event which almost coincided with the death of James' eldest son, Prince Henry, James fell into the hands of favourites, such as Carr and Villiers, the traditions of State were less regarded, and the rights of subjects were invaded with greater recklessness than before. In the first part, Parliament was summoned regularly, got through a good deal of business, and passed many important regulations; in the second, James aimed at doing without Parliament as much as possible, and at carrying on the government by a series of proclamations, all more or less in violation of the principles of the constitution. Puritans were constantly imprisoned without trial. Arabella Stuart, for no crime at all except that she was the king's cousin, was shut up in prison with her husband, and after his escape pined away and died. Taxes were collected according to the book of rates, merchants were irritated, and all classes felt a want of security which was fatal to contentment. Meanwhile it must not be forgotten that James was doing his best in many ways to promote the good of his subjects. He gave great attention to the draining of the fens, and to the improvement

of inland communication, and he was carrying out an extensive scheme for the colonization of Ireland.

These things, however, cost money, and in 1614 James, after an interval of four years, determined to summon another Parliament. In order that it might be more amenable to his views than its predecessor, he entered upon a wholesale scheme of corruption and intimidation, in itself a great compliment to the power and independence of Parliament, and allowed certain persons, who called themselves "undertakers," to undertake the business of getting together, by hook or by crook, a House of Commons whose views would agree with the court. Unfortunately this excellent plan got wind, the electors were by no means pleased at this arrangement to "take them in and do for them," and, in defiance of the undertakers, chose candidates who were opposed to the court, consequently the members came up to Westminster in no mood to be cajoled. It was in vain that James made them a soothing and complimentary speech, they refused to be pacified, and in spite of all the courtiers could do, the Commons attacked the whole policy of the government and especially the book of rates. In dismay James demanded instant supplies, and threatened instant dissolution if they were not granted. In return, the Commons stormed at the court, and, within two months of its meeting, Parliament was dissolved before it had passed a single measure or voted a single penny of supply. It was known afterwards by the name of the Addled Parliament. At the dissolution several members were imprisoned, which certainly amounted indirectly to a violation of the right of freedom of speech, though, as the victims had ceased to be members of Parliament at the dissolution, it was very difficult to offer resistance, especially as an appeal for *habeas corpus* was sure to be decided by the judges in the king's favour.

From 1614 to 1621 no Parliament met, and the court pursued its way unchecked, and James was able to develop his theory of governing the country as an absolute sovereign. Unfortunately for the Stuarts, James did not by any means adopt the right means to make his system popular by the goodness of its results. Instead of choosing the ministers so as to show that he was anxious above all things to get the best men as his advisers, he allowed power to fall into the hands of unworthy favourites, and instead of vigorously carrying out, both at home and abroad, the policy which the nation desired, he looked coldly on the Puritans at home and appeared to be truckling to Spain abroad. Meanwhile he dismissed Sir Edward Coke, the Chief Justice, from his place, raised Sir Francis Bacon to be Lord Chancellor, and gave free swing to the Courts of Star Chamber and High Commission, from which he is said to have derived a revenue of £133,000 a year. All confidence was lost in the government and in the law courts, and a vigorous opposition was organized in the country. Of the party of resistance Coke, spurred by his disgust at the king and his jealousy of Bacon, took the lead, and it was clear to all observant men that James would find his next Parliament even more refractory than the last. It was at this time that the leaders of the Long Parliament were growing up; Cromwell was an undergraduate at Cambridge; Pym and Hampden were young men; Wentworth and Eliot were as yet on the same side; Milton was at school; all of them were learning from James the lesson of what government without a Parliament was likely to become.

Meanwhile it was becoming more and more necessary that James should call a Parliament. His revenue was not up to his expenditure. His court was more expensive than that of Elizabeth, as was likely enough, since he had a family to



support ; but it was also more luxurious and more debauched, while it had none of the attractive majesty with which the Tudors had charmed their subjects. Under Carr the expenses were trebled, and the new favourite Villiers, Duke of Buckingham, did not let them fall. On the other hand James' aversion to enforce the fines levied on the Catholics for not attending church, deprived him of a profitable source of revenue, while his reckless grants to his favourites seriously diminished the value of the crown lands. Pressed by his necessities, James determined to appeal to his subjects, and the year 1621 seemed specially favourable for the purpose. War had just broken out between the Protestants and Catholics, and as James was allied to the former through the popular marriage which Cecil had negotiated between their leader Frederick of the Palatinate and the English princess Elizabeth, he thought that something might be made out of the eagerness of his subjects to join in the strife. So, in spite of the king's well-known dislike to bloodshed, war was spoken of, and the idea was mooted of sending a regular English expedition to fight for the princess, and to provide funds for this purpose Parliament was summoned.

On their assembly James made them a most courteous speech, alluded slightly to his former errors which he imputed to ignorance, said that in a former Parliament he had been misled by "certain beasts called undertakers," and hoped they would vote supplies readily. The Commons, however, refused to fall into the snare, and made it plain that before the nation's money was voted the nation's wrongs ought to be redressed, and they had not to look far to find a plentiful crop of abuses.

In order to raise money, James, in addition to increased customs, had resorted to the sale of offices, and his new favourite Buckingham had originally come into notice by

buying the office of cupbearer. He had also created the new title of baronet, which he had sold for £1000, and had even resorted to the sale of monopolies. It was on the holders of the last that the anger of the Commons first fell. But they did not mean to stop here, they determined to attack the government itself, and by way of showing their detestation of the conduct of the courts of law they made choice of Lord Chancellor Bacon as their victim.

For their weapon the Commons went back to their armoury and brought out of it an instrument which had not been used since 1450. But it brought with it an ill omen for the court, for impeachment had last been used against Suffolk, the hated minister of Henry VI.

Lord Chancellor Bacon, Sir Giles Mompesson, and other monopolists were impeached before the House of Lords, the former for bribery, the latter for the monopolies they held ; and so well in accord were the two Houses, that a tremendously severe punishment was inflicted, and the accused were almost ruined by their sentence. Bacon, though condemned for bribery, was a thorough scape-goat for the court. He had probably done no more than others, and even Shakespeare, in the *Merchant of Venice*, plainly regards the receipt of presents by the judge as nothing out of the common, but as he himself said "he had been the justest judge in England this fifty years; and this had been the justest censure in Parliament this two hundred years." The king remitted a part of Bacon's sentence, but the moral effect was the same, and ministers had again discovered that there was a power in England which the greatest ministers of the crown could not defy with impunity. Parliament then granted two subsidies. A subsidy was a tax of four shillings in the pound on all revenue gained from land, and a property tax of two shillings and eightpence in the

pound upon the actual value of goods. A subsidy therefore fell upon the landed gentry and the owners of personal property, while tonnage and poundage fell upon the merchants, and indirectly through them on the nation, in the form of an increased price for foreign produce, and at the same time decreased the export trade of the country by raising the price of English goods in foreign countries; but in those days such matters were little considered. A recess of five months followed, and on their return the Commons again petitioned the king against the increase of Catholicism, and begged that Prince Charles might marry some Protestant lady. This interference with state mysteries disgusted James even more than the impeachment of his ministers. He ordered them to desist from such impertinence, and they in return drew up a protest to the effect "that their liberties and privileges were the undoubted right of the subjects of England: the State, the defence of the realm, the Church, the laws and grievances were proper matters for them to debate: members have liberty of speech, and freedom from all imprisonment for speaking on any matters touching Parliament business." Upon this the king sent for the journals of the House. "Set seats for the ambassadors," was his remark when the deputation from the Commons was announced, and he tore the protest out of the volume of the journals with his own hand. Parliament was at once dissolved, and Coke, Pym, Selden and two others were imprisoned.

When Parliament was gone James felt free again to follow his own course; he dealt lightly with the Catholics, and entered into negotiations with Spain for a marriage between Prince Charles and the Infanta. Great was the excitement at this in England; it was said that the churches had never been so crowded before, as they now were by the multitudes who flocked to pray for the failure of the scheme, and great

was the joy when the news came that Buckingham had broken off the negotiations in disgust, and that England was saved. For a time Buckingham was the most popular man in the kingdom, and James took advantage of this turn of affairs to summon another Parliament. It met in high glee, and readily voted supplies for the popular war against Spain; but in other matters its spirit was the same as that of its predecessors, for it passed a resolution which, finally as was hoped, declared monopolies to be illegal, though some special patents, such as that for smelting iron with pitcoal, were excepted; it again used the weapon impeachment, and condemned Middlesex the Lord Treasurer for bribery, and at this crisis James died.

In view of the pitched battle between king and Parliament which occupied the reign of Charles I., the results of the skirmishes under James I. were most important. James had attacked the rights of his subjects by interfering with freedom of election and the right of members of Parliament to be exempt from arrest, and by infringing the right of freedom of speech and discussion; he had attacked the liberties of his people in general by the excessive use of proclamations, and by the collection and altering of taxes unauthorized by Parliament. Parliament in return had secured control over their own elections and freedom from arrest for their members, they had protested against the improper use of proclamations and the illegal levying of taxes, they had placed on record their right to free discussion, they had straitened James' means of doing without a Parliament by cutting off the revenue gained from monopolies; and finally, by reviving impeachments, they had provided a ready weapon with which to attack those officers of State who might, even in deference to the wishes of the prince, think fit to violate the liberties of their country. x

## CHAPTER XIII.

### EARLY PARLIAMENTS OF CHARLES I.

THERE is a great contrast between James I. and Charles I. Where one was strong the other was weak, and where one was weak the other was strong. James disgusted the nation by his ungainly gluttony; Charles impressed all by his kingliness and moderation. On the other hand the father was well informed, and skilled in political theory and precedent, the son was no scholar and knew little of the theory of politics. James cared a great deal for constitutional positions, but was ready to give way on practical points; Charles fought only for matters of practice and detail. The father knew how to tell the strength of the opposition, and was ready to yield with grace; Charles never could estimate the force against him, and he had a large measure of what is known as firmness in a king, but in others by the name of obstinacy. His was just the character to bring matters to a crisis, and so the leaders of the opposition felt. "The king in his own nature is very stiff," said Sir Ferdinand Fairfax. He was just twenty-five years of age, and had had little experience except of getting his own way. But over and above these faults Charles had one which more than all of them led to his ruin. He was not a man of his word, and he quickly taught his subjects that it was useless to

make a compact with a man who regarded no oath as binding so long as it was made with a mental reservation, and the knowledge of this peculiarity lost Charles his head.

James, no doubt, was in many ways both a pedant and a fool, but in others he was superior to the statesmen around him. He wished for peace, though he perhaps did not take the right means to get it. He was opinionated towards Parliament, but so was Queen Elizabeth. Like her, he knew how to give way, and could throw over part of the cargo to save the rest, and his death, by putting the helm into the raw hands of Charles and Buckingham, undoubtedly diminished the chances of weathering the storm. Quarrels arose, not on general questions but on narrow points, such as the levying of ship money and the command of the army, and so made compromise less easy, while the absence of any general political theory made Charles less able to argue the merits of the struggle in which he found himself engaged.

At his father's death Charles was himself popular and engaged in a popular policy ; but before his first Parliament met the feeling in his favour had a good deal subsided. Suspicion was thrown on the honesty of his conduct in Spain, and on the truth of the narrative which he and Buckingham had given to the nation. His marriage contract with Henrietta Maria of France was found to be in most points as favourable to the Catholics as that which had been broken off with Spain. It was seen that in ecclesiastical matters he was likely to be guided by Laud, Bishop of Bath and Wells, the most active of the high church party ; and as being more energetic and enterprising than James I., his movements were viewed with greater suspicion. Accordingly when Parliament met, although war was on the point of breaking out with Spain, supplies were dealt out very

sparingly, only two subsidies were granted ; and tonnage and poundage, which were usually granted to the king for life, were only offered to Charles for one year, an offer which he scornfully declined. Other matters for quarrel arose. Dr. Montague, who had been censured by the Commons, was petted by the court ; customs duties, in spite of the rejection of tonnage and poundage, were levied as before ; and the nation was horrified to hear that eight ships which had been lent to the French for the war, were being used against the Huguenots at Rochelle. Under these circumstances Parliament, when it met, after an adjournment, at Oxford, refused to grant any more supplies and was forthwith dissolved.

The most obvious way to the heart of the nation was to rouse its enthusiasm by a victory over Spain ; but under Charles the attempt proved a failure, and the ships which should have brought victory from Cadiz, brought nothing better than fever, and still further disgusted the nation with the incompetency of their rulers. The resources of the court were, however, exhausted, and it was absolutely necessary to appeal to Parliament. But in doing so, Charles violated the spirit of the constitution by pricking for the office of sheriff his most active opponents, each in his own county ; while a writ was withheld from the Earl of Bristol, who, as ambassador at Madrid at the time of Charles' visit, might have had a very awkward story to tell. On the 2nd of February Charles was crowned, but his popularity was now gone, and on the 6th his second Parliament met. It at once complained of the increase of popery, the collection of tonnage and poundage, and the release of Dr. Montague, the Arminian preacher. The Commons then appointed three committees ; (1) for grievances ; (2) for the state of the kingdom ; and (3) for religion. Religion, throughout the whole reign, was a sore stumbling-block in the way of

any real accord between Charles and his people. Charles was a member of the Church of England, thoroughly attached to the Protestant cause as he understood it, but utterly out of sympathy with the majority of his subjects. They were for the most part Puritans, or at any rate the most active members of the Commons belonged to that party, and they were desirous of introducing reforms which were most objectionable to Charles and his clerical advisers. It was not even as if Charles wished to stop still and to remain where he was. No, he was desirous with Laud's assistance, of introducing into the ceremonial of the Church a higher degree of decency and order; in fact, for the time he lived he was a ritualist. The reforms aimed at do not seem very alarming to us. He wished to restore the communion table from the centre to the east end of the church, and to make the communicants kneel when they received the bread and wine; but they raised a fierce storm in the minds of eager Puritans, who wished on the other hand to do away with the ring in marriage, the cross in baptism, and the surplice; and it was plain that, if the two parties pulled in opposite ways with such vigour, the cord which connected them must soon break asunder. Charles and Laud were accused of popery, and the irritation was extreme. Meanwhile politicians were furious at the ill success of Charles' policy, and the failure of the Spanish expedition, and the Commons were ready to impeach Buckingham as the cause of all this disgrace. While this was going on in the Commons the Lords were disgusted at the way in which the king had withheld a writ of summons to Parliament from the Earl of Bristol. By constitutional theory, every peer is of right the adviser of his sovereign, and the peers were quite justified in refusing to proceed to business until the earl's writ was sent. Under these cir-



cumstances Charles found it impossible to agree with the Parliament without sacrificing Buckingham; this he would never do, so dissolved his second Parliament, and by that act added still further to the distrust with which he was regarded by all classes of his subjects.

During the next year, 1627, no Parliament sat, and the king's subjects had a taste of arbitrary power. Tonnage and poundage were of course collected just as though they had been granted by Parliament; but money was also raised by forced loans and benevolences. Naturally resistance was made, and five gentlemen who refused to pay were thrown into prison. To appeal to the judges of the land for redress was the next step, and the five gentlemen applied to the Court of King's Bench for a writ of *habeas corpus*; but, as in Bates' case, the judges preferred the pleasure of the king to the rights of their fellow-subjects, and the writ was refused. It was now plain that neither in purse nor person was an Englishman free from the tyranny of his sovereign, and all men looked to Parliament to redress so frightful a violation of the English constitution. Happily for England, Charles was again forced by his necessities to summon a Parliament. The vagueness of his foreign policy had led him into a war with France, so that Charles was now opposed to the two great Catholic powers, and ought to have been popular; but the utter incapacity which characterized the administration of his affairs, and the disgust caused by his disregard of the liberties of his subjects had set all classes against him.

The elections for the Parliament of 1628 took place amidst the greatest excitement. Everywhere the constituencies were thoroughly roused, and patriot leaders were returned in all places not under court influence. Many great men were in Parliament for the first time. Oliver

Cromwell and John Hampden were there; and there, too, were the old leaders, Sir John Eliot, Sir Thomas Wentworth, and John Pym. All were thoroughly clear that the king's attack upon the rights of his people must be put a stop to, and, in the words of Wentworth, that "such a stamp must be put upon the liberties of the country that no future tyrant should dare to invade them." The Commons at once set to work, and in the Petition of Right, they drew up four articles which they hoped would put a stop to the most crying evils of the time. I. "That no freeman should be required to give any gift, benevolence, loan or tax without common consent by Act of Parliament." Secured as this right had been by immemorial usage, by Magna Charta, and the Confirmatio Cartarum, Charles I. had taught his subjects that it was needful to lay down the good law again. II. "That no freeman should be imprisoned or detained contrary to the law of the land." This, too, was a fundamental axiom, and had been laid down by Magna Charta, but Charles I. had been careful to show that in his reign it must be again enacted. III. "That soldiers and mariners should not be billeted in private houses." This referred to a new form of punishment or compulsion recently devised by the court. When gentlemen refused to pay forced loans, soldiers and sailors were quartered on them either till they paid or were sufficiently punished. IV. "Commissions to punish soldiers or sailors by martial law were to be revoked, and no more issued." This was drawing the tiger's teeth. Except for fighting the enemy abroad, for which service men volunteered, or for repelling invasion at home, for which each man went to the front as in duty bound, the law of England did not recognize an army, still less an army impressed by the king for the purpose of compelling his subjects to submit tamely to his attacks upon their liberties; and it was not till

many years after this that Parliament conceived it necessary that England should follow the example of the continental nations, and possess an army of professional soldiers, compelled to turn to the right-about or the left-about at the word of their officers, under pain of punishment under the Mutiny Act. Brought face to face with these demands Charles writhed. He would promise anything, just anything, except not to break the law of the land. But the Commons had now committed themselves, and were obliged to get their petitions made law. To put pressure upon Charles, Eliot again proposed to impeach Buckingham, and at last the king yielded and gave his consent to the petition. Overjoyed with their victory, Parliament granted five subsidies, a liberal supply, and were then prorogued for a recess.

In their absence two events of first-rate consequence happened. Wentworth went over to the king's side, and Buckingham was assassinated. The defection of Wentworth was most important, it deprived the nation of a vigorous leader and gave Charles a most valuable adviser and agent. To many it was a great surprise; but both general and personal influences had for some time been working for this end. It was a time of political discussion. The relative position of Parliament and king was much in debate, and on this point Wentworth and the patriot leaders totally disagreed. The question amounted to this, whether the affairs of the nation could be best managed by a small executive appointed by the king or by the hands of Parliament itself. It is this question which is at the root of all discussion as to the method of government in a free country; whether in fact the ministry should be appointed directly by the head of the State as in the United States, directly by Parliament, or indirectly by Parliament as is the case in England. Now in the reign of Charles I. this

question was beginning to attract attention as it had done before in the times of Edward III. and Henry IV. The nation was ruled by Buckingham, whose person and policy were alike distasteful, but of whom they had no chance of getting rid constitutionally except by impeachment, and even that could be barred by the prorogation and dissolution of Parliament. This brought into strong relief the evil of sole appointment by the king. The alternative to the men of that day, seemed appointment of ministers by Parliament. But was Parliament, on the other hand, better fitted to exercise the trust? Was it sufficiently wise, well informed and judicial to take the king's place? Could it do the nation's business efficiently? Eliot thought it could, Wentworth that it could not. This was the point at issue. For the law of the land as such, Wentworth had no contempt; he saw that neither king nor Parliament could gain by setting it at defiance, and therefore he was thoroughly prepared to put a stop to such gross breaches of the constitution as were provided against by the Petition of Right. But with Eliot's idea that the House of Commons should assume the executive as well as the legislative power he had no sympathy; and he thought the notion that a mixed body like the House of Commons should pry into all the secrets of State, and take upon itself to examine into every detail of government, utterly absurd. But it was not only general political theory which moved Wentworth. He was a strong, competent man; he hated being in the second rank; he had quarrelled with his neighbours, the Saviles, in Yorkshire; and all these motives acting together impelled him to go over to the king's side and see if he could not carry out his own idea that a strong executive acting under the direction of the king was able to give the country a better government than the ill-directed and spasmodic efforts of

the Parliamentary leaders. It was for reasons such as these that Wentworth joined the king.

Hardly had he done so when Buckingham, who might have been a most serious rival, was removed by Felton's dagger, and the way was left open to Wentworth to carry out his scheme. He became president of the council of the north, and at once prepared to take up his residence in York, and show what a vigorous and uncompromising executive could do for the country. From this moment, Eliot, who recognized in Wentworth the foe of his political creed, became his deadly enemy, and turned on him all the fire with which he had attacked the old-favourite Buckingham.

Meanwhile Charles had been using his opportunity of showing the nation how far he could be trusted to keep his promises. In accepting the declaration of right he had solemnly agreed not to collect any tax which had not been voted by Parliament. He was now wringing tonnage and poundage from the merchants, precisely as if the Petition of Right had never been heard of.

His was certainly a hard case. He had involved himself in war; he had an extravagant court, and a spendthrift queen, and yet he could not even take a few hundred pounds out of the purses of his subjects without ill-natured people grumbling that he was breaking the law.

The Commons, however, did not take this view of the matter, and no sooner had they met than they broke out into indignant remonstrances against the collection of tonnage and poundage. Great was the fury of the court. The deadlock was complete. No supplies could be granted, and while king and Parliament were at open strife government could hardly go on. Under these circumstances, Charles determined to prorogue and dissolve the Houses;

but before he did so, a memorable scene was enacted. The speaker was held in his chair, while resolutions were passed by acclamation, that he is a traitor who attempts any change in religion, that he is a traitor who levies any tax not voted by Parliament, and that he too is a traitor who pays the same; and with this declaration on its lips, the third Parliament of Charles I. passed away. In anger Charles at once imprisoned Sir John Eliot and other patriots. Eliot became the martyr of the constitution. Unable to obtain from the judges a writ of *habeas corpus*, unable to get assistance from Parliament, Eliot and his fellows were condemned for riot, to imprisonment and fine. One by one the rest compounded, but Eliot held on. His health broke down, and he begged that, but to recruit his strength, he might be allowed to visit his native county. Charles denied his request, Eliot died in the tower; and Charles had even the miserable satisfaction of refusing to his relatives the poor pleasure of burying his body by the side of his ancestors. The king himself wrote on their petition: "Let Sir John Eliot's body be buried in the church of the parish where he died;" and that was the chapel of the tower.

This brings us to the end of the first part of the reign of Charles I. He had now determined to have no more to do with Parliaments but to rule his kingdom by his own despotic power. The time which Charles had chosen for this new departure was singularly inopportune. Parliament at that moment occupied in all probability a greater space in the eyes of the nation than it had ever before done. Within four years there had been three general elections accompanied by greater excitement than any that had occurred before. The office of member had been sought by the best of the land, and the ablest men in England had

shown themselves eager for the honour of representing even the smallest boroughs. It was not a moment when Parliament had ceased to be of use, when its work had been accomplished, and when it might sink like the French estates, from uselessness into formality, from formality to imperceptible decay, and so vanish out of mind. No ! Charles I. tried to cut off the English Parliament in its early manhood, when it was still rejoicing in its strength, and he endeavoured to make his subjects forget its existence at the very moment when they were most conscious of its worth. It was always thus with Charles. If ever a thing could be made worse by being done at the wrong time, he chose that moment for doing it ; and his choice of a time to declare his intention of doing without Parliament for the future, was one of the worst mistakes of a singularly hapless reign.

## CHAPTER XIV.

### THE REBELLION AND ITS CAUSES.

BETWEEN 1625 and 1629 Charles had three Parliaments ; between 1629 and 1640 he had no Parliament at all. During that period he ruled with the assistance of a small body of advisers, and made no effort to take into his confidence the body of the nation. It is not to be supposed that in doing this Charles was actuated by any other motive than a desire to do his best for his people. He was thoroughly desirous to advance their interests, but he had seen that Parliament interfered with his notion of what was wanted, and he was determined to show that, both in politics and in religion, he knew better what was good for his people than they did themselves. It was the old story of "everything for the people and nothing by the people," and it brought about the usual results. In political matters the king's chief adviser was Wentworth, afterwards Lord Strafford ; in ecclesiastical, Laud, Bishop of London, and afterwards Archbishop of Canterbury, and those three set about carrying into practical effect the maxim above quoted, which they called among themselves by the name of "Thorough."

It was clear from the first that the great difficulty would be about money matters. The income of all English kings was derived from two sources—their own rights and parlia-



mentary grants, and from the latter Charles had cut himself off; and therefore, if he was to keep within the law, he must live on his own property alone. This property was made up from various sources: there were the crown lands, the feudal dues, fines in the courts of justice, forfeiture of lands and goods of offenders, first-fruits and tenths from the clergy, and the fines paid for not attending church by the Roman Catholics. These made up his legal revenue, and out of it he had to pay for the whole administration of government, for at this time the king was expected to pay out of his income not only his personal expenses but also those of the navy, the salaries of the ambassadors and the judges, and the other officers of State. These expenses were almost enough to absorb the revenue; and clearly, if Charles was to live upon his income, he would have to be very economical indeed. In this matter Wentworth was Charles' chief adviser, and he pointed out that the king's first aim must be to expand his revenue as much as possible, while at the same time he cut down his expenses. War clearly was too expensive a luxury to be indulged in, so peace was made with France and Spain; meanwhile Wentworth examined the means of increasing the revenue. It is one of Adam Smith's five maxims of taxation that as much as possible of the money that leaves the pocket of the subject, should find its way to the purse of the king. Wentworth found that this rule had been grossly neglected, and that the king was swindled by his officers in every direction. He at once set about remedying the evil, and in his own district, the north, he soon succeeded in raising the revenue to four or five times its former amount, without taking a penny more out of the pockets of the people, merely by insisting on the honesty of the king's officers. By doing so, Wentworth conferred a great public benefit; but when he turned to the

work of enforcing economy at court, he found his task much more difficult. The great obstacle in the way of improvement was the queen, Henrietta Maria, who had been accustomed to the gaiety and extravagance of the French court, and was incapable of appreciating the necessity for economy. "She cared for nothing but balls and fêtes, without thinking for a moment where the money to pay for them was to come from." It was in vain that Charles endeavoured to make her understand his position ; she would do nothing to help him, and indeed, when the king, by Wentworth's advice, had wisely refused some extravagant gift to a courtier, she took a positive pleasure in granting it herself, and then wheedling consent out of the weak-minded Charles. Wentworth's efforts in this direction mainly resulted in provoking the enmity of the queen, and he soon withdrew to Ireland, where he determined to show Charles what a splendid thing absolute power might be made in the hands of an able man. When he was gone, things at court went from bad to worse ; Charles' own tastes, though artistic, were expensive, and, hurried on by his wife, he allowed the cost of the court to swell to three or four times its amount under James I., that is, to about ten times its cost under Queen Elizabeth ; while pensions and offices were constantly bestowed upon court favourites, which permanently decreased the royal revenue.

Under these circumstances, it was quite out of the question for Charles to live upon his ordinary income. From the beginning he had collected tonnage and poundage, and the passing of the Petition of Right had made no difference in this respect ; but after 1628 the payment of tonnage and poundage was viewed with much greater disgust by his subjects, and Charles was soon obliged to have recourse to the servility of the judges in order to coerce his subjects

into submission. In 1628, just after the passing of the Petition of Right, Robert Chambers, a London merchant, refused to pay the illegal customs. He was summoned before the Court of Exchequer, where he had the temerity to declare, that there was no country in Europe where the merchants received so little encouragement as they did in England; it was as bad as living under a "Turkish tyranny." For these words, he was brought before the Court of Star Chamber on the charge of trying to "make people believe that Charles' happy government was a Turkish tyranny," fined £2000 and sent to the Tower, where, as he refused either to pay or to apologize, he was kept till released by the Long Parliament. Other merchants thought better to pay. But the collection of tonnage and poundage did not suffice to supply Henrietta's wants, and Charles was obliged to look round for further sources of revenue; and he next turned to monopolies. We might be tempted to think that monopolies had been sufficiently declared illegal under Elizabeth and James I., but Charles' Attorney-General, Noy, whose chief claim to ability consisted in holding that to be law which other people thought to be illegal, was of opinion that though it was forbidden to grant a monopoly to one person, there was nothing to prevent him granting one to two, and so the sole right of selling various articles, was granted to companies of individuals, who paid Charles a large sum on the spot and a royalty on the amount sold. Monopolies were granted to companies, who were given the sole right of making soap, starch, gunpowder, and other articles; and it seemed as if in time every article of common use would be absorbed by one company or another. In this way the traders and merchants were thoroughly annoyed, and the feeling of discontent was spread far and wide through the land.

It was one of the maxims of Charles V. that you should never irritate two powerful classes at once ; that if you had to do anything which displeased the nobility, you must keep the merchants in a good temper, and so on. The merchants of England were now thoroughly irritated, and Charles, in defiance of the maxim, proceeded to tread upon the toes of the nobility. He did this by a new effort to gain money. At the Conquest, the old folk-land was, as we have seen, annexed by the king, under the name of forest. This had been a large source of revenue to the Plantagenets, but it had dwindled away, partly in grants to the courtiers, and partly in encroachments made by the neighbouring proprietors, at times when the crown had been inobservant of its rights, or unable to enforce them. In this way, large tracts of forest land had been lost, and Rockingham Forest, which had formerly been sixty miles across, was now reduced to six. Suddenly the king determined to reassert his rights, and Lord Holland was sent on a tour through England to reclaim for the crown all land within the old boundaries, to which its present holders could not show a legal title, and to fine those landowners who were found to have trespassed on the royal domain. In this way, Rockingham Forest was restored to its former dimensions ; in Essex alone £300,000 was made by fines and forfeitures, and the Earl of Essex was nearly ruined. Dire was the distress caused to the nobility, and the anti-court feeling of many noble houses in the civil war can be traced to the restoration of the forests.

The next to suffer were the country gentry. By an old law, owners of land worth £20 a year, that is, about £200 a year at the present time, were to be knighted. This practice had fallen into disuse, and Charles took advantage of the circumstance to send an inquisition into the country,

and to fine those gentlemen who had not complied with the obsolete law, and so another class was arrayed against him. Even the poor did not escape. A statute of Queen Elizabeth had ordered every cottage to have four acres of land attached to it, and numerous proclamations had been issued to forbid the building of additional houses in London. Neither of these had been enforced, but Charles sent a commission for twenty miles round London to inquire into the matter; the poor were "mightily vexed," and one builder was fined £1000 and ordered to pull down forty new houses which he had erected, on pain of paying the like sum. Innkeepers were ordered to pay a new tax on wine, and when they refused were forced into compliance by a prohibition to cook any meat. The result was that in one way or another, beer, wine, taverns, tobacco, soap, and numerous other articles were all taxed, and thus Charles raised his revenue from £500,000 to £800,000.

Still his income was not sufficient, for his expenses had increased. The large sums that were spent on court festivities had left little for the ordinary payments of government; salaries had been allowed to fall into arrears, and the navy had been totally neglected. In consequence the coast swarmed with pirates and smugglers, and commerce and the revenue alike suffered. To remedy this Charles determined to increase the navy, and it seemed an excellent opportunity to increase his income at the same time. To furnish themselves with a navy in times of war, the English kings had always been in the habit of collecting money from sea-board counties and towns, and there is some evidence to show that a tax for this purpose had sometimes been collected from inland counties. For instance, in 994 Ethelred had taxed all his land by hides, and 310 hides had had to furnish one ship; and again, Elfric, Archbishop of

Canterbury, had left to the people of Wiltshire, his native county, one ship, which could only have been an object of curiosity to them, if they, in their turn, had not had to furnish a ship to the king. Still the writs that were sent out by Noy were carefully drawn up and addressed to sea-board counties only, and the tax was collected without much difficulty; and it was not till after Noy's death that more reckless advisers persuaded Charles to make the whole kingdom pay. As a matter of equity this was not at all unfair, for the welfare of the navy was a subject of interest to all; but it aroused the deepest indignation when it was seen that under cover of providing for his navy, Charles was really establishing a precedent for making himself completely independent of Parliament. Still Charles had the opinion of the judges in his favour, and it was a bold act of John Hampden to refuse to pay the tax of twenty shillings levied upon his estate. The matter was brought for trial, and it was felt that the future of English liberty depended upon the issue. The case was carefully argued; precedents were brought forward on both sides, but Hampden's lawyers had no difficulty in producing a series of evidence to show that taxation by the king without the consent of Parliament, under any pretext whatever was illegal; and they rested their cause upon the three great safeguards of the subject, Magna Carta, the *De tallagio non concedendo*, and the Petition of Right. But it was useless to prove what was the law of the land, when the judges decided that the king was above all law; and out of the twelve judges, two voted for Hampden, one decided against the king on technical grounds, the other nine gave their decision in the king's favour. This settled the question as far as the law was concerned; but it did not make the collection of ship money any easier, for it was a very

different thing to pay money when you seemed to be doing a favour to the king, and to have it dragged out of your pocket, whether you liked it or no ; and so people grumbled the more and wondered when Parliament would meet again.

Meanwhile the Star Chamber and High Commission Courts had all they could do, to keep down the spirit of disaffection both in Church and State. Leighton, a clergyman who had written a book on bishops in general, which was by no means complimentary to the order, was brought before the Court of Star Chamber by Laud. He was condemned to be imprisoned for life, besides the minor punishments of having to pay £10,000, stand in the pillory and have his ears slit. Prynne, a barrister, wrote a very dry but learned work on the immorality of stage plays, which, as the queen had just acted in a masque, was most irritating to the court, and the author was condemned to the same punishment as Leighton. Bastwick and Burton, who had also written against the bishops, and who were regarded by the court as the mouthpieces of the rising tide of Presbyterianism, were also severely punished, but so great was the popularity of the prisoners that when they were removed from London, one hundred thousand men are said to have lined the roads to show sympathy with their cause.

Clearly the spirit of resistance was being thoroughly roused, and though Charles and his advisers were rejoicing in the result of the ship money trial, abler men saw that should circumstances force the king to call a Parliament, he would meet with such a storm as had never been felt in England.

Happily for England such a necessity did arise. The king's attempt to force the English Prayer-book on the Scots, roused that nation to resistance ; war broke out, and the king's slender finances, which had barely sufficed for

the ordinary expenses of the court, proved totally inadequate to meet this new strain, and he was obliged to appeal to his Parliament.

After an absence of eleven years Parliament again found itself at Westminster. Charles had chosen a very good pretext for assembling the Commons. We were actually at war with the Scots, and it seemed improbable that the Commons would desert the king in such a crisis. This feeling had its effect, and it seemed as if national sentiment would get the better of the desire for liberty. John Pym, however, in a celebrated speech, recalled the Commons to a sense of the importance of the crisis in domestic politics, and implied that, in his opinion, the liberties of England were to be preferred by Englishmen, to the vain glory of putting down rebellion in a sister kingdom, which had risen for the purpose of securing objects not less dear to Englishmen than to themselves. Charles was most anxious to get the Commons to grant money; they, on the other hand, were equally desirous of making clear their opinion that ship money was illegal, and though they had no special objection to the war against the Scots, they felt that the security of their own liberties was to be preferred. As time went on, this feeling, which was fanned by Pym, increased; probably the king only anticipated a refusal when he dissolved Parliament before it had granted him supply. But this conduct irritated Parliament by its seeming contempt, and the failure of the Short Parliament of 1640, only paved the way for a more stubborn conflict in the Long. At the very moment of the dissolution, Charles showed his contempt for the forms of the constitution. He kept convocation sitting after Parliament was dissolved, until it had passed some new canons and voted a supply, by which means he identified his cause still more closely with that of



the bishops, and so prepared the way for the ruin of both. This conduct caused a riot, and the bishops were maltreated, many persons were arrested, and Charles wrote with his own hand to the Governor of the Tower to order one of them, John Archer, to be racked, and to be examined "before torture, in torture, and after torture," a letter which needs no comment.

The dissolution, however, only put off the evil day; the English were beaten in the field, for they had no heart in the war; the treasury was exhausted, and even Strafford saw that, dangerous as a Parliament was likely to be to him, its meeting was inevitable, and with a heavy heart Charles sent out the writs which summoned the Long Parliament to meet on the 3rd of November, 1640.

From a constitutional point of view, the years we have just considered showed four things. (1) That the king's ordinary income would not suffice for his wants without additional taxes. (2) That the Courts of Star Chamber and High Commission were undermining the rights of Englishmen to be tried by their peers, and therefore were at variance with the spirit of the constitution. (3) That no faith could be placed in the judges, so long as they could be dismissed at the king's pleasure; and (4) that the only remedy for these and similar evils lay in the frequent meetings of Parliament.

The Long Parliament at its meeting gave its attention to three points, the punishment of the guilty, the reparation of injustice, and the prevention of such crimes for the future. The impeachment and attainder of Strafford, though of the utmost importance in political history, introduced no new principle into the constitution. The revival of impeachment in the case of Lord Chancellor Bacon had a greater constitutional significance. The impeachment of Lord Strafford

only showed, that Parliament once assembled, the haughtiest minister of the crown was not safe from its attacks. Strafford had deliberately set himself to show the country that despotic power could and would give the people a better government than they could get for themselves. In Ireland he had succeeded in securing prosperity, if not content ; but in England the system had failed, because Charles and his advisers had not succeeded in gaining enthusiasm by their success, which is the only price for which a high-spirited nation is willing to sell its liberty. Strafford, however, represented the system in the eyes of the nation, and his execution proclaimed the fact that, successful or unsuccessful, England preferred constitutional government to any other form of rule.

But how was the nation to secure itself against similar schemes for the future ? It was plain that it was only the uncertainty when Parliament would meet, which had encouraged Laud and Strafford to carry on their plans, unheeding of its displeasure, and that only regular sittings of Parliament could secure the nation from similar attempts. But how were these regular sittings to be secured ? At present the plan of voting all taxes for one year only, forces the sovereign and his ministers to come back annually to Parliament for supplies ; but Charles I. had shown Parliament that with the law courts at his feet, he had the means of forcing his subjects to pay money which Parliament had never granted, and therefore they were obliged to find some direct method of compulsion. They did this by means of the Triennial Act. This Act imposed a direct limitation upon the prerogative of the crown, and it shows therefore that Charles had taught his subjects, that the old theory that the constitution was perfect, and that only its abuse had to be provided against, which had been the basis of all legis-

lation in the Middle Ages, was no longer tenable; and it shows what an impression the fear of "Thorough" had made, that such a notion should have been taken up by the Long Parliament, composed, as its members for the most part were, of country gentlemen, the most conservative class in any country. The Act made Parliament compulsory on the king, whereas it had previously been his prerogative to summon it or dissolve it just as he chose. It was enacted that Parliament was *ipso facto* dissolved at the end of three years from its election, unless it were then actually sitting, and then at its next prorogation. This was to prevent the king from summoning a Parliament and then adjourning it from time to time, so as to keep within the letter of the law, without allowing it to meet at all. In the next place a Parliament must be summoned within three years of the dissolution of the last, and if the king failed to move, the writs were to be sent out by the House of Lords, and in their default by the sheriffs, and if they refused to act, the people were to meet themselves and choose representatives. And to prevent an immediate dissolution, Parliament was not to be dissolved for fifty days after its meeting.

This was one of those beautiful pieces of paper legislation, so useful in theory, so useless in practice, with which the creators of constitutions have often amused themselves. Was it likely for a moment that any king who had made up his mind that he would not have a Parliament, would allow one to assemble on such terms as these? Charles II. said he would not, and he was probably a very good judge of the case. A Bill which had much more important consequences, was one which was passed without any reference to theory whatever. For the very practical purpose of enabling the government to borrow money with greater security, a short Act was passed, which ordered that Parliament should

not be dissolved without its own consent, and on this Act the legal position of Parliament during the whole course of the war rested.

The next thing to be done was to reform the law courts, and for this purpose an act was passed which abolished *in toto*, the Courts of Star Chamber and High Commission, and with them their sub-committees, the council of the north, and the council of Wales. With them fell the whole system of the criminal jurisdiction of the Privy Council with all its iniquities, and from the day when the Star Chamber ceased to sit the use of torture became unknown in England. It had first appeared in the reign of Edward IV., and the period through which it endured is that during which the power of Parliament had been subordinate to that of the king.

Another Act declared that for the future judges should hold their offices, not at the king's pleasure but *quamdiu se bene gesserint*, that is, on their good behaviour, which it was hoped would make them independent of court influence. Finally a series of statutes were passed against ship money, distraint of knighthood, and illegal customs duties, and the extent of the royal forests was fixed at what it had been before the late enlargement.

As a reaction against the policy of Laud, which had attempted to restore to the clergy the political position which they had held in the Middle Ages, an Act was passed which expelled them from the House of Lords, and this Act, with one exception, brings to a close the constitutional labours of the Long Parliament, which had now reformed the chief abuses in Church and State and secured, as it thought, the frequent meeting of Parliament.

With the events which brought about the struggle between the king and the Parliament, such as the rebellion in Ireland,

the Grand Remonstrance, or the attempt to seize the five members, we have not much to do, save only to remark that the last was a distinct attack upon the privileges of Parliament, but the Militia Bill, upon which the war actually arose, involved a point of the highest constitutional importance. It arose out of the necessity of sending troops to crush the rebellion in Ireland, and the use which Strafford had proposed to make of the army had shown the danger of entrusting Charles with a military force. Under these circumstances Parliament conceived the idea of taking the command of the forces of the kingdom into its own hands, and the Militia Bill was the result. It was a distinct encroachment on the prerogative, for from time immemorial the king had always been the leader of the host, and it shows how utterly Charles' attempt to seize the five members had aroused the distrust of his subjects that anything of the kind should have been thought of for a moment.

Till the reign of Edward VI. the county militia had always been led by the sheriff, while the fortresses had always been entrusted to governors appointed by the king; but in that reign lord lieutenants of the county had been appointed, who took into their hands the military part of the sheriff's duties, and appointed the officers of the militia. Parliament now proposed to take to itself the appointment of lord lieutenants, and through them of the officers of the militia, and also to appoint the governors of fortresses, a tremendous encroachment on the king's power, to which Charles refused his consent, and on which hostilities broke out. This question of the command of the army formed, with the religious question, the chief points in all the negotiations between the king and Parliament; and the difficulty of settling matters so complicated, ultimately brought about the quarrel between the army and

the Parliament which led to Pride's Purge and the king's death. With the events of the war we have nothing to do, and the growth of the English constitution may be considered to be in abeyance, between the outbreak of war and the restoration of Charles II. ; but the various constitutions which were devised after the king's death are worthy of study, not because they were permanent, but because they show what were the ideas of the ablest Englishmen of the time on the subject of political theory.

Between 1649 and 1660 the country was attempting to discover some form of government, which, avoiding the name of king, should still give them the advantages which they had had at the best times of the old monarchy. From 1649 to 1653 an attempt was made at a pure republic ; between 1653, and July, 1659, at a republic headed by a single person ; and during the short interval that remained, a pure republic was again tried. With the first and last of these, we have, strictly speaking, nothing to do, as they were each in turn set completely aside, the one for a Protectorate, under Oliver Cromwell, the other for the old monarchy, under Charles II.

Immediately after the king's death, a resolution was passed in the Commons that the House of Lords was "useless, dangerous, and ought to be abolished ;" and the next day it was voted that government by a king or single person is "unnecessary, burdensome and dangerous, and ought to be abolished." Having thus got rid of the House of Lords and the king, the Commons took the government completely into their own hands, and as they saw that it was ludicrous for so large a body to undertake the management of details, they elected a council of State to act as an executive. This council governed England for four years, and under their auspices Ireland and Scotland were sub-

dued, and war made with the Dutch. It was not satisfactory, because the House had ceased to represent the most influential part of the nation, whose wants were expressed by the army. As it refused to dissolve itself, unless the seats of the present members were secured, and a veto granted to them on the new elections, they were expelled by Cromwell, acting on behalf of the army. A new council was set up, composed of nine army men and four civilians, who proceeded to collect another assembly composed of men chosen by them from lists sent up by the independent ministers. This assembly, which is often known by the name of Barebone's Parliament, plunged recklessly along the path of reform, abolished Church patronage and tithes, did away with the Court of Chancery, appointed a committee, on which not a single lawyer sat, to reform the law, and overwhelmed themselves, with the best intentions, under such a heap of odium from "harassed interests," that they were very glad indeed to give up again their power into the hands of Cromwell, and disperse to their homes.

Disgusted with the failure of their ideal republic, the officers invited Cromwell to take upon himself the office of Lord Protector, and a new constitution was formed on the basis of the old monarchy. By the "Instrument of Government" the functions of government were to be threefold, and were to be divided between the Protector, the council of State and the Parliament. The Protector was to be the head of the State, he was to be general by sea and land. With the aid of his council he was to decide questions of war and peace, and he was to act in ordinary matters with their advice. Vacancies in the council were to be filled up, by the Protector's nomination, from a list of six persons presented by Parliament. Parliament was to be held at least

once in three years, and might not be dissolved till it had sat five months ; in it lay the sole right of legislation and taxation, but the protector was allowed to suspend the coming into operation of any act for twenty days. The great objects in this constitution, were to concentrate the government in the hands of a strong executive which should be in accord with the head of the State and with the Parliament, and at the same time, by placing legislation and taxation solely in the hands of Parliament, to give that body a thorough control over the policy of the government. Parliament itself was reformed and made imperial by the addition of members from Ireland and Scotland. Many rotten boroughs were abolished, and large towns such as Birmingham, Manchester, and Leeds, were enfranchised. The scheme, which was perhaps too artificial, never received a fair trial. It was regarded with disgust by the royalists and republicans, and after a stormy session, during which about a hundred members were excluded for persisting in debating the question of government by a single person, which was the very essence of the constitution, Cromwell took advantage of the expiration of five lunar months to dissolve the Parliament.

It is a mistake to suppose that Cromwell was at all desirous of wielding absolute power. Again and again he attempted, at the risk of arousing dissensions which he could not heal, to get a Parliament which would work with him as a constitutional ruler, but it was impossible for him to succeed. When once a government by a pure republic had failed and constitutional government was to be again tried, the nation would have preferred that it should be tried by the Stuarts, and any freely elected Parliament would certainly have declared for a restoration. Cromwell's only hope then lay in the extreme parliamentarians, but



at least half of them were strongly in favour of a republic, pure and simple, and it was only the fact that the opinions of the rest of the nation received force by being the opinions of the army, that enabled Cromwell to hold his own at all.

His next attempt at parliamentary government occurred in 1656 ; but royalists were excluded from voting, and above ninety republicans and presbyterians were not allowed to take their seats. This Parliament made a still further attempt to restore the old form of government. By the Humble Petition and Advice Cromwell was to take the title of king, he was to be allowed to name his successor, and he was to have supreme command of the forces by sea and land. The members of the council and the chief officers were to be nominated or removed with the consent of Parliament. Parliament was to consist of two Houses and meet at least once every three years. Taxation was to be wholly in the hands of Parliament, but it was understood that the new king was to have the same right as his predecessors in respect of refusing his consent to the laws. The part of the plan which related to the name king had to be dropped in deference to the wishes of the army, but the rest passed, and practically restored the old English constitution in an amended form. Its great superiority over the constitution established by the Instrument of Government lay in the much greater elasticity which was given to the method of nominating the council, which would pretty certainly have resulted in a short time in the establishment of party government with a regular cabinet, nominated in accordance with the wishes of the majority of the Commons. It was also a great point to have got rid of the vexatious plan of allowing the Protector to postpone a law for such a small period as twenty days ;

and the addition of a House of Lords might in theory have been expected to give greater stability to the constitution. The plan, however, had to contend with the insuperable objection, that it was the attempt of a minority to enforce their will upon the majority of the nation; and as the omission of the title king deprived its supporters of the protection which they would have got from the statute of Henry VII., which secured from prosecution persons who had acted under a *de facto* king, it was received with no enthusiasm. In practice it was soon found that jealousy arose between the House of Commons and the new House of Lords. The dissolution of this Parliament in 1658, brought to a close Cromwell's last attempt at parliamentary government, and his death the same year prevented him from making another experiment. Still, though these attempts were a failure, they served to educate the nation in political theory, and the tenacity with which, at the Restoration, the nation as a whole clung to the essential reforms of the Long Parliament, and steadily pursued the attempt to bring the policy of the officers of the crown into accord with the wishes of Parliament, may be in some measure imputed to the abortive attempts at constitution making, which had been made by Cromwell and his friends.

At Cromwell's death the discordant elements in the nation broke out; Richard Cromwell, though excellently suited to make a constitutional monarch, had no talent for acting as constitutional sovereign of a third part of the nation in defiance of the wishes of the other two; he pleased neither the saints nor the army, he could not stand by himself, so he quietly stepped aside, and allowed the combatants to settle the question without his intervention in the contest. The matter was soon decided. The army was divided against itself; the stronger portion brought back the Long

Parliament, including those members who had been expelled by Pride's Purge, in 1648, and the Long Parliament dissolving itself, declared for a convention, and the convention declared for the king. Charles II. returned, hampered by no constitutional compacts, and it remained to be seen whether he, like the Bourbons, had learnt nothing and forgotten nothing, and whether the nation would sit contentedly down and allow Charles, if he saw fit, to go back to the principles of "Thorough," to re-establish ship-money, Courts of Star Chamber and High Commission, and suspend for ever the sitting of Parliament.

## CHAPTER XV.

### THE RESTORATION PARLIAMENT.

EAGER royalists must have been very much disappointed with the reign of Charles II. He was no more able to bring back the days of Charles I. than the days of William the Conqueror; and he, if not they, realized that the England to which he had been restored was a new England, and that the monarchy which he had regained was a new monarchy. Even the Convention Parliament never thought for a moment of giving up the right of taxation, it scouted the notion of a revival of Star Chamber and Court of High Commission, and it at once proceeded to limit the king's power by fetters much stronger, if less tangible, than any which had bound his predecessors. In fact, with the accession of Charles II., we come to an entirely new period in the English constitution. We go back indeed to the state of things under Henry IV., but with this important difference, that whereas the Commons of Henry IV. were strong because they were backed by the great nobles, the Commons of Charles II. were irresistible because they were backed by the people.

Parliament in this reign secured the power of controlling the king's policy through its control of the purse, and for the next forty years the great question at issue was, how was

a mode of living to be found for these opposing forces? Monarchy was accepted by the nation as the best form of government; the monarch had had to accept Parliament as the only method of getting supplies; but were these two perpetually to remain at variance? Were the views of the king's ministers perpetually to be thwarted by Parliament? Clearly not, and therefore, either the king must find some way of getting Parliaments elected which would do what he wanted, or he must choose ministers who would do what Parliament desired. Which must it be? Charles II. struggled hard and even successfully against his fate; James II. refused to accept the alternative at all, and lost his crown, and it was reserved for William III. to adopt the system of party government by which he chose his ministers from that party which possessed a majority in the House of Commons. Of the means by which Parliament secured its control, of the growth of the Cabinet, and of the rise of party government, we shall have to treat in the following pages.

We must first examine the method by which Parliament obtained control over the king. One of the first questions which occupied the attention of the Convention Parliament was that of the king's revenue, the great bone of contention between the kings and the Commons. The king at this time had to provide for his court, fleet, ambassadors, judges, and other expenses; and as it was of the highest importance to the nation that these things should be done well, it was clearly not their interest to stint the king, and it was merely their fear that money grants would be used against the interest of the nation that had made them appear niggardly in their votes. It was hoped that these difficulties had now been removed, and the Commons therefore were desirous of giving to the king a suitable and prudent revenue, and

for that purpose appointed a committee to inquire into the matter. This committee found that the average revenue of Charles I. from 1627 to 1641 had been £900,000, of which £200,000 was illegal; they had also to consider that the value of money had decreased during the last twenty years, and also that Charles I. had been notoriously pressed for money. They determined, therefore, to give Charles II. a total revenue of £1,200,000. The king's revenue had formerly been made up of a great many miscellaneous items, among the chief of which were the feudal dues. These dues had for a long time been very irksome, and the determined attempt to get rid of them under James I. had only just failed; they had been in abeyance during the commonwealth, and the Convention Parliament determined to simplify the king's revenue, and at the same time to shift from their own shoulders a heavy burden, by commuting the tax. Accordingly they passed an Act by which "all tenures of estates of inheritance in the hands of private persons (except copyhold tenures) were turned into free and common socage, and the same were for ever discharged from homage, wardship, values, and forfeitures of marriage, and other charges, incidents, and tenure by knight's service, and from aids for marrying the lord's daughter, or for making his son a knight." If the Commons had borne in mind the example of the Great Charter they would have extended the same boon to their copyhold tenants, but they did not, they still continued to collect from them the heriots and dues from which they had relieved themselves. Nor did their injustice stay here. The feudal dues ought in fairness to have been commuted for a tax on land, but the landowning lawgivers commuted them for an hereditary excise on beer, by which excellent method, they shifted their own burden to the shoulders of the nation, and gave an illustration of the fact

that injustice and oppression are not wholly the monopoly of kings. At the same time the old rights of purveyance were got rid of, which as far as it went was a boon to the nation, and the further deficiency in the revenue was made up by a grant of tonnage and poundage for life. In this way the king's ordinary revenue was settled, leaving extraordinary expenses to be provided for by special grants.

The next question considered was the defence of the kingdom. Of course the Militia Bill which had never actually become law, as it was declared by the Commons to have been passed without the consent of the king fell to the ground, and so the appointment of lord-lieutenants and the command of the fortresses was again assumed by the king. But the progress of the time seemed to have rendered some more systematic defence than the old militia necessary, and England had to conform to the practice of the Continent in keeping a standing army. Such an army, and a first-rate one too, was in existence, but it was an object of dislike to all parties; to the royalists, as the memorial of Naseby and Worcester, to the Presbyterians as the instrument of Pride's Purge and of Oliver's rule; and was regarded with dread by the Commons as the possible means of future oppression. It was resolved to disband it, but at the same time to preserve the nucleus of a standing army by keeping two, and finally several, regiments of Monk's loyal soldiers, amounting to five thousand men, who were called Life Guards. To increase the size of this army became the object of the king, to reduce it that of the Commons, and the amount of military expenditure has been a bone of contention from that day to this.

These changes were made by the Convention Parliament, but they were confirmed by the Royalist Parliament of 1661, and this Parliament moreover laid down certain rules and

passed some regulations which were important as defining the position of the king and Parliament, and which were conceived for the most part in a thoroughly royalist spirit. First of all they asserted, that no legislative power resides in either or both Houses of Parliament without the king, and that the sole command of the militia and of all forces by sea and land had been and always was the undoubted right of the crown. Next, that tumultuous meetings for petitions (unless approved by the Council of London) were forbidden. In 1664 the king sent to ask that the wonderful clauses which were contained in the Triennial Bill of 1641, might be done away with. It was now time for the Parliament, according to the Triennial Act, to be dissolved, and Charles had no wish to lose so loyal a Parliament; the members on their side were equally glad to escape the vicissitudes of a general election, and readily entered into the plan. Accordingly the Triennial Act was repealed, though with singular inconsistency a clause was inserted in the Bill, that Parliament ought not to be intermitted for more than three years. In 1661 the first attempt was made to prevent by law the election of members unfavourable to the court. By the Corporation Act, all holders of municipal office were compelled to renounce the covenant and to take the sacrament according to the English form. This was a blow at the influence of the Presbyterians, who were strongest in the little corporations, and who sent to Parliament members who represented their views.

Another change introduced what at one time would have been considered a revolution. In the year 1663 convocation, which had hitherto clung to the right of the clergy to vote their own taxes, granted a subsidy for the last time, and as now the special rights of the clergy to criminal jurisdiction had disappeared, no further distinction remained to mark



off this great body from the rest of the nation, except a somewhat anomalous rule which forbids a clergyman to sit in the House of Commons.

In spite of the strong royalist feeling which had been shown by Charles' first Parliament at its election, an opposition soon sprung up, and the Commons soon found themselves engaged in putting upon Charles restrictions of the strongest kind, attacking his policy, and forcing him to change his ministers. The rise of this opposition was due to many causes, but most of all to the strong inherent love of freedom and desire to manage their own affairs which had ever been the characteristic of Englishmen. At the very eve of the restoration, Harrison, the regicide, had said, "Well, let the king come in, and let him call together a Parliament of as loyal men as may be, but so long as they be men of estate, within twelve years they will all be Parliament men." And so it had turned out. Charles II. had been by no means everything that the cavalier fancy had painted him. He was idle and vicious, and deeply shocked the sense of propriety which had been the indirect outcome of Puritan teaching. His extravagance impaired the resources of the State; but the difference between his position and that of his father was shown in the means each adopted to supply the deficiency. Charles I. dissolved Parliament and collected ship money. Charles II., who dared not have exacted a penny without the grant of Parliament, was obliged to rely on French assistance. But not only this, with Charles II. Parliament was absolutely necessary, and he, therefore, instead of coercing it, was obliged to take means to keep it in a good temper. For Charles II. was no fool; without half the learning of James I. he had a far keener eye for politics, as brave as his father, he had more subtlety and less obstinacy; and he had brought back from

his travels one settled determination, and that was, never to set out again. Accordingly, between Charles and the Parliament a good-humoured contest was going on all the time. Charles did not mean to fight, he was prepared at any moment to throw over his ministers and even his brother if necessary; but he knew that to yield an inch was often to gain an ell, and with his thumb carefully feeling the pulse of the nation, he steadily pursued his plans, and at the close of his reign he found himself more popular and practically more absolute, than any member of his family who ever occupied the throne of England. At first, however, the gain was all on the side of the Parliament.

It was a great day when the system of appropriation of supplies was reintroduced. Not since the days of Richard II. had Parliament voted supplies for special purposes; since that time votes had taken the form of tonnage and poundage, or subsidies, by which method the king got a large sum of money which he applied as he chose. This plan, however, was far from satisfactory. It was out of the question that any real check could be kept upon a king's extravagance, nor had Parliament any security that the money which they designed for a special purpose would be spent for that object. In 1665, however, Parliament, in voting the sum of £1,250,000, declared that the money was to be applied only to the war with the Dutch. This was opposed by Charles' chief minister, Clarendon, who thought that if a thing had not been done in the reign of Queen Elizabeth, there was no reason for doing it now; but Charles was in favour of it, as he thought supplies would be granted with more liberality, and as the plan was found to work well, it was repeated, and soon became the rule. This was obviously an enormous gain, it made the control over the purse far more strict, and the Commons followed it up, by insisting upon making

inquiry as to how the money thus voted had been spent, and as the result of the inquiry, the treasurer of the navy was dismissed from his post.

The next step was to establish a control over the appointment of the king's ministers. This the Commons never succeeded in doing; but, during the reign of Charles II., minister after minister was forced from the service of the crown, either by direct vote or by his position being rendered untenable. This system was most harassing. It reminds one of the old days, when Gaveston or Suffolk was expelled and murdered by the barons; it was wholly subversive of any regular policy, for the king did not consent to allow his plans to be regulated by his ministers, and while he threw over servant after servant, still insisted on steering the ship in the teeth of the gale. The first to fall was Clarendon. He had been the faithful servant both of Charles and his father, and was devoted to the interests of the monarchy; but he was old-fashioned, and while he disgusted the Commons by his stretches of prerogative, he annoyed the king by his attachment to decency. In consequence he had few friends, and when his wars turned out unlucky, and when London was ravaged by the plague and desolated by the fire, it was felt by all that Clarendon was the right person to be sacrificed, so he was dismissed by the king, impeached by the Commons, and fled to the Continent, where he died in exile.

✓ The next attempt to stand between the king and the Parliament was made by the Cabal. The word cabal has derived from the actions of these ministers an odious signification, and it is popularly believed that the word itself was coined from the initials of the names of Clifford, Arlington, Buckingham, Ashley and Lauderdale. This, however, is not the case, as the word cabal was in use before these members

were thought of; and it is possible that, had the word not been rendered hateful by this ministry of Charles II., we might at the present day have been calling our body of chief ministers, not the Cabinet, but the Cabal. The word cabal originally signified a secret or intrigue; but it was given to those confidential persons with whom matters of State were discussed. It was the first germ of the present system of government by a cabinet, and therefore deserves careful consideration. During the times of the Tudors and those of the first two Stuarts, the most important permanent body in the kingdom was the Privy Council; to it all the high officials belonged, in it all important matters of State were discussed, and by its members, sitting in Star Chamber or in Court of High Commission, all the most important political and ecclesiastical offences, with the exception of treason, were tried. But no body in the realm was more changed by the events of the great rebellion than the Privy Council. By one blow the Courts of Star Chamber and High Commission were abolished; by another, the assumed right of imprisonment by order of the Privy Council was done away, and nothing remained to the Council except its capacity of giving advice to the king on political matters when asked, and a rather vague function of acting as a Court of Appeal in ecclesiastical matters, which it derived from the time when in the absence of the Great Council it was the general court of appeal for all matters both civil and ecclesiastical. But though the Privy Council had thus lost a great deal of its ancient glory, it had still within it the germs of a system which has since developed into a form of government which has been imitated all over the world, and which was destined to solve the question, in what way the rights of the Parliament and the rights of the king could be made to work for the good of the nation.

The members of the Privy Council were nominated by the king, and could be dismissed by him at pleasure. They were bound by an oath not to divulge secrets committed to their charge; for the most important secrets of State often came within their knowledge. The members, however, were numerous, too numerous, in fact, to be all taken into confidence. Nor were they all trained in State affairs. Some were great noblemen who had no taste for detail, others were officials of the court, others were bishops and clergy; only a few had the aptitude for business and the knowledge of State affairs which could make them efficient servants of the king. To these few alone the king's confidence was given; and they alone were summoned when the most important matters were to be discussed. They became, in fact, a council within a council, and were known by the name of the Cabal.

It was a distinct advance in the method of government when this body of ministers came to be recognized; for on the one hand there was greater security against sudden changes of policy now that several ministers had to be consulted; on the other hand, the known position of these persons prevented the king and his real advisers from sheltering themselves behind the general body of the Privy Council. The advantages of the scheme, however, were not at first recognized. The members of the present Cabal were unscrupulous; none of them had the confidence of the nation, only two of them had the real confidence of the king. Hence their policy inclined this way and that, and though the nation hardly knew the extent of the evil, the first result of the introduction of the Cabal was to enable Charles to make a secret treaty with Louis XIV., which it was hoped might have led to the ascendancy of Catholicism and the degradation of liberty.

For Charles hoped by the aid of Louis to make himself the possessor of a larger standing army than that with which he had been entrusted by his subjects. He saw perfectly clearly that this was the only way by which he could succeed in regaining the ground which Parliament had won, and he knew that in France and Spain the rise of standing armies had ever been coincident with the fall of popular institutions. But Charles had entered into the race too late. There is a point up to which parliamentary institutions are so weak that the possession of an organized force by the king is able to overthrow them ; but that point once gained, Parliament can bid defiance to the sovereign's efforts to obtain such a force against their will, and can even, if necessary, allow him with safety to wield such a force, as in an earlier stage of their growth would have been fatal to themselves. Happily for England this point had been reached before Charles began his attempt, and Parliament had effectually secured their right, of limiting the king's income. His only chance then was to gain an income from elsewhere, and in his extremity he turned to the king of France. But Louis' grants, though liberal, were intermittent, and were hampered by conditions which Charles knew better than to try and fulfil ; the nation was thoroughly aware of its danger, it looked with almost nervous jealousy at any of Charles' attempts to increase his already too dangerous force ; and it showed again and again that it decidedly preferred that England should be imperfectly defended than that its defence should be entrusted to its present king.

Meanwhile the nation was still further disgusted, and the vigilance of Parliament still further increased, by the commission which had been appointed to inquire into the way in which the money voted for the Dutch war had been spent. For it had been found that while £5,590,000 had been voted

for the war, the charge for the war was in reality only £3,200,000, that £2,300,000 had been spent in what might be called sundries, and that a debt of £900,000 remained. The court was furiously attacked, and Charles made a desperate effort to get rid of Parliament by proroguing it first for a year, and finally for twenty-one months. During this time the court was sore put to it to pay its way. In order to get a little more money, notice was given to the king's creditors that the principal of debts due in 1672 was not going to be paid, but that the creditors would only receive the interest, which amounted to a declaration of national bankruptcy, and produced the greatest consternation among capitalists. But in spite of all his efforts, Charles found it was impossible to go on without a Parliament, and in 1673 that most disagreeable body was again at Westminster and attacking the court as furiously as ever. The connection with France, the disgraceful financial transactions, and the approaches towards Catholicism, gave a plentiful crop of grievances.

The violence of the storm fell mainly on the Catholic members of the Cabal. For Charles, in his eagerness to do something to deserve the subsidies of Louis, had ventured upon a course which brought into prominence an entirely new grievance. Hitherto the assumed power of the king to suspend laws had hardly been heard of. Until the Reformation English law had been singularly free from statutes made by one body of the nation for the purpose of fixing disabilities on another. The customs of the country were such as all honest men would maintain, and as it was the interest of no king to alter; while the Parliamentary statutes were devoted either to enforcing these or to reasserting against the king the principles of the constitution. It was clearly no object of the king to interfere with the former; to interfere with the

latter was to bring down upon himself the anger of his people, and perhaps to lose his throne. But when, after the Reformation, laws began to be made in the interests of the Church for the purpose of inflicting disabilities on Roman Catholics and Nonconformists, it became a question how far the king had the right of exempting individuals or societies from the operation of these laws. For it might be argued with great show of right that this did come within his prerogative. No one doubted that the king could pardon a criminal. Could he not, therefore, before trial absolve a man from the consequences of his acts? And if he could permit one man to break the law, why should he not exempt a whole class from its operations? Hence arose the struggle for the suspending power which Charles, under the advice of the Cabal, had first used on a large scale, when he at one swoop, by his declaration of indulgence, suspended the operation of no less than thirty statutes against the Roman Catholics. Had the use of the weapon been introduced with greater circumspection, it might have escaped unnoticed, but this wholesale application roused Parliament at once, and it not only compelled Charles to withdraw the declaration, but also it determined to rid itself of Catholic advisers who could be capable of aiding him in such an outrageous course. For this purpose it passed the Test Act, which excluded from office all persons who would not take the sacrament according to the rites of the Church of England, and make a declaration against transubstantiation. This Act broke up the Cabal ministry, and Buckingham and Shaftesbury, its two ablest members, joined the opposition.

Danby was the next minister. He resumed Clarendon's policy, and tried to secure the king's power by passing a bill which made all statesmen declare on oath that they



considered resistance to the king unlawful, and that they would make no alteration in Church and State, but the bill was thrown out in the Commons. Meanwhile the Commons were steadily pursuing their principle of appropriating the supplies, and in 1677 they ordered a subsidy which had been voted for the use of the navy to be paid into the hands of their own receivers. Danby's power did not last long. Having been involved, though unwillingly, in some scandalous arrangements with France, he, in his turn, was impeached by the Commons, and committed to the Tower, and thus three ministries, all of which had been devoted to the crown, had fallen through the vote of the House of Commons. It was rendered plainer than ever, that either the king must get his Parliament to agree with him, or that he must give way to it, unless some third scheme could be discovered by which some body could be interposed between king and Parliament, which on the one hand could control the king, and on the other should not be obnoxious to Parliament.

Such a scheme was Temple's, and it is interesting, because it has been one of the very few attempts at paper constitutions which have been tried in England. His idea was, to make the Privy Council a real check on the king. It was to consist of thirty members representing the law, the Church and the government. Half were to be ex-officio members, influential, disinterested; half were to be named by the king. In order that the members might be men of substance, the annual incomes of the whole were not to amount to a less sum than £300,000 a year, which was a little less than that of the Commons. This plan looked excellent on paper, but in practice it was a failure, for the members were far too heterogeneous to agree; the number was too large for secrecy, and when Temple himself agreed to submit the

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most important business to an inner circle of the council, he practically acknowledged the failure of his plan. In this way the middle course was shown to be impossible, and hence the problem was again reduced to the dilemma above stated.

## CHAPTER XVI.

### FINAL STRUGGLE BETWEEN KING AND PARLIAMENT.

A CRISIS was brought about in the history of king and Parliament by the impeachment of Danby. Hitherto Charles had borne with his Parliament, because he thought it the most loyal he could get. But when it again impeached his first minister, he lost patience and determined to run the risk of a general election. The new Parliament was no better than the last. Besides impeaching Danby, it tried to exclude the Duke of York from the throne, and was in its turn dissolved.

At the moment of doing so, Charles gave his consent to the Habeas Corpus Act, which again asserted the principle that any unconvicted prisoner, unless accused of treason or felony, might call upon the Lord Chancellor or any judge, under penalty of a fine of £500, to issue a writ of *habeas corpus* to the gaoler ordering him under penalty of a fine of £100 to bring up the body of the prisoner within not more than twenty days, and that the judge on his appearance should release him on bail. In the case of treason or felony, if a prisoner was not tried in the next term or next sessions of gaol delivery after his commitment, he could on prayer to the court be released on bail, unless it appeared that the crown's witnesses could not be produced at that time. This Act contained no new principle, but it gave greater facility for the assertion of an ancient right, and henceforth the

crown ceased to be able to imprison its enemies in defiance of the principles of the security of the person.

Charles' attempt to improve his position by an election failed; again he dissolved Parliament, but its successor only continued its course, and again an election occurred. Two years the struggle raged; thrice the king exercised his prerogative of dissolving Parliament; once the Commons exercised theirs of refusing supplies; once the Exclusion Bill passed the Commons, only to be rejected by the Lords. At length the violence of the Commons defeated their own object, Charles found that the nation was with him, and having secured a permanent income from Louis XIV. he dissolved the Oxford Parliament and determined to dispense with the services of Parliament until one could be elected which was more to his mind. Of this he had some hopes, for the struggle had shown that there was a party in the kingdom upon whom the king, so long as he was moderate, could rely, and the violence of the Commons, who had acted on the principle of excluding James, not for what he had done, but for what he might do, had frightened many men of moderate views, and caused a reaction in Charles' favour. This reaction took the form of the rise of a new party, and from henceforth the country party, as the opposition was called, took the name of Whigs, and the court party, which yet contained many men who were not courtiers, took the name of Tories.

The rise of organized parties in Parliament is the most important event which has taken place since the Restoration; it has given us the only conditions on which it seems possible that constitutional government can be worked, and happily, at their first rise, the principles they followed, though roughly distinguishable, were so vague, that almost every man was able to range himself under the banner of one or

the other, so that at the very moment when party government was coming into existence, we were saved from a conflict between small cliques, which might have rendered its working impossible. Generally speaking, the Tories were those who thought that, granted that England was to be governed by king and Parliament, greater advantage was likely to be gained by laying stress upon the prerogative of the king than upon the rights of Parliament, and as in ecclesiastical matters, men who thought thus, were almost invariably Churchmen, they adopted as their watchword, "King and Church." The Whigs, on the other hand, were those who thought that the safety of the country lay in giving prominence to the powers of Parliament, and they were not too careful to preserve the ancient prerogative of the crown, when they thought that its exercise was at variance with the interest of the subject. The Exclusion Bill was not the first question on which Parliament had been divided on the lines of these two parties. In 1641, when Pym, finding that a reaction in the king's favour had taken place during the autumn recess, brought forward his Grand Remonstrance, which was practically a statement of the Parliament's whole case against the king, and when this Remonstrance was carried against the court by eleven votes, the members who voted on either side were the men who at the Exclusion Bill would have called themselves Whigs or Tories. The names Whig and Tory are practically meaningless. Tory was the name given to a Catholic marauder of the North of Ireland, Whig to a Cameronian covenanter of the West of Scotland, and they were supposed to have some connection with the Catholic tendencies of the Tories and the Nonconformist alliances of the Whigs, but the names were soon adopted by the parties themselves, and all sense of their original signification was lost.

The struggles between the courtiers and the opposition under Charles II. had gradually produced a line of demarcation between the two parties, which was made perfectly clear by the Exclusion Bill, and Charles, recognizing in the Tories his true friends, at once saw that his only plan of securing a friendly Parliament was to do all he could to strengthen that party in the House.

Parties to some extent drew their forces from different classes of society. As had been the case in the civil war, the nobility were about evenly divided; there were nobles who were Whig, and nobles who were Tory, and some of the greatest families of the land, such as the Russells and the Cavendishes, were among the strongest supporters of parliamentary rights. In this, England had an enormous advantage over other countries; her nobility have never looked at things from a purely class point of view, and it will be a very bad thing for England if ever she loses this distinction. The ranks of the nobility gradually faded into those of the country gentry. Here we find a similar division, but not so even, for the gentry, who had little to do with London, and, living as they did in the country, were not generally so well informed or so personally interested in politics, and who, moreover, often saw their interest, bound up with that of the Church, which was supposed to be threatened by the Whigs, were in a greater proportion Tories. Numbers of men were still alive who had fought for Charles I., for a man who was thirty at the battle of Edgehill would only be seventy now, and these men naturally rallied round the king, when they thought his prerogative was in danger. On the other hand the country gentry, though their views on politics were Tory, were most zealous Churchmen, far more zealous than the nobility, and the slightest breath of toleration for Roman Catholics or of the introduction of popery, was enough to

drive them all into the camp of the Whigs. In all parts of the country, however, almost in every parish, there were men, often of great wealth and influence, who from family tradition, personal grievance, or jealousy of some neighbouring squire were Whigs, and who served to keep alight the flame of Whiggism in their own district. As contrasted, however, with the Tory gentry, the great mass of the Whig party came from the cities and boroughs. It was in the small manufacturing towns that the Puritans had been strong, and it was their connection with these, which were often strongly nonconformist, which gave a flavour of dissent to the Whig party. For although by the Corporation Act the courtiers had hoped to clear the constituencies of dissenters, the Act had not proved a complete success; for the distinction between a nonconformist and a low churchman was so slight, that many dissenters had no objection to taking the sacrament according to the rites of the Church of England, in order to qualify themselves for office; and as in most boroughs the franchise was entirely in the hands of the corporations, or at any rate in those of a very small body of leading citizens, the constituencies, if they did not return nonconformists, at any rate sent Whigs.

To remodel the corporations and make them Tory, was therefore Charles' object. This was an excellent plan, for as the corporations were mostly self-elective, if they were once made Tory they would remain Tory, and, though the townspeople would be represented by members who held views diametrically opposite to their own, this new reinforcement would make the Tory ranks outnumber those of the Whigs, and give Charles the compliant Parliament to which he looked forward as the only remedy for his troubles.

The corporate towns held their privileges by virtue of charters which had been granted at one time or another by

the sovereign, and many of them bore a very ancient date. By these, certain privileges, including the right of self-government, were granted to the burgesses, who purchased the charter either by the payment of a sum of money or by the execution of certain duties. Many of these duties had been quite neglected, and few towns could be found, which had not, in one way or another, infringed some article of their charter. What was easier than to call in the charter, to find the flaw, to forfeit the privileges of the present corporation, and to return the charter with a new list of aldermen, and a new mayor named from the Tory party? This was what Charles did, and during the last three years of his reign, while living upon the income granted by the king of France, he was engaged in remodelling the constituencies and providing for the election of a Tory Parliament.

This plan was very wise ; it showed that Charles II. had not only thoroughly appreciated the fact that he could not resist the will of the Parliament, which had been shown in the fall of successive ministers and the overthrow of his plans for toleration, but also that he had seen that the only road out of the difficulty was to get a Parliament which, while it nominally represented the nation, should really be elected in deference to the wishes of the king, and that moreover he had hit upon the right method of attaining such a result. At the close of his reign Charles II. was in a stronger position than he had ever been since the Restoration, and it was unfortunate for the Stuart dynasty, that he died before he was able to thoroughly reap, in a compliant Parliament, the fruits of his own astuteness.

James II. was a very different man to his brother ; he was to Charles II. what Charles I. had been to James I. With a higher sense of duty, he was utterly wanting in tact ; and while he enjoyed the details of the administration, he



was unable to appreciate the higher points of statesmanship. The calm which had followed the dissolution of the last Parliament had completely misled James; he thought that the nation had got over its fit of dislike to a popish sovereign, and perhaps he gave too much weight to a decree which had been passed by the Tory University of Oxford, condemning the doctrine that resistance to a king is under certain circumstances lawful. Nor is it impossible that a more able man than James might have misread the signs of the times. James' declaration that he would observe the laws and protect the Church, was received in good faith, and, in spite of the fact that he continued to collect customs duties which had only been voted for his brother's life, his accession was not received with any general manifestations of alarm. His first Parliament was the first which had been elected by the new corporations, and its composition showed the success of Charles' plan, for out of all the members, James himself said that there were not more than fifty whom he would have wished to change. They readily granted him the same income as his brother, with the addition of a tax on sugar and tobacco; and as he had Louis XIV. to fall back upon, he was not ill-provided. James was still further elated by the easy defeat of the rebellions of Argyll and Monmouth, and he was forthwith led to enter upon a course which ranged against him, as has been well said, "not only those classes who had fought against his father, but those who had fought for him." The story of his mistakes is well known; how he used his dispensing power to give Roman Catholics not only toleration, but even ascendancy in the kingdom; how he turned out experienced officials merely because they were Protestants; how he set up a new Court of High Commission, and attacked the Universities of Oxford and Cambridge; how the nonconformists refused to join

him in his attacks upon the Church ; how even the Church was driven to give up her doctrine of passive resistance by the prosecution of the seven bishops ; and how the nation was finally driven to despair by the birth of a prince who would be educated as a Roman Catholic, and who supplanted the popular Princess Mary. Within three years from his succession, James had succeeded in arraying the whole nation against him.

In the time of Edward II., of Richard II., or even of Henry VIII., this would have been equivalent to his deposition, for in those times the nation could at a week's notice have marched upon London an overwhelming force to which the king could have nothing to oppose but his own personal adherents. Now, however, times had changed ; the retention of those five thousand men at the Restoration had given the king a trained force, against which untrained levies, however valiant, could oppose no effectual resistance, and it was absolutely necessary that if the nation was to have a fair chance of declaring its will, some force should be found which should balance the thirteen thousand men, whom James had established on Hounslow Heath. Such a force was found in the army of William of Orange, who came over to give the nation an opportunity of declaring their will in a free Parliament. Happily no battle was fought. Deserted by their leaders, and disheartened by their unpopularity, James' soldiers struck no blow in his defence, and James sought refuge in flight. A convention was summoned, which, taking into account the double flight of James, declared in a somewhat wordy document that "King James II. having endeavoured to subvert the constitution of the kingdom by breaking the original contract between king and people, and by the advice of Jesuits and other wicked persons, having violated the fundamental laws, and having

withdrawn himself out of the kingdom, had abdicated the government, and that the crown had thereby become vacant."

Many schemes were proposed for filling up the vacancy ; but finally the throne was offered to and accepted by William of Orange, the son of James' sister, and Mary his wife, James' daughter, and so not only was James himself removed from the throne, but also his lately born son, whom the majority believed to be supposititious, was excluded from the succession. But the convention did more than merely transfer the crown from one member of the royal family to another ; they reasserted in the most positive terms the chief points upon which the constitution rested, and the way in which they had been violated by the late king. For this purpose they drew up the Bill of Rights, whose chief declarations were :—

"Whereas the late King James II., by the assistance of diverse evil counsellors, judges and ministers employed by him, did endeavour to subvert and extirpate the Protestant religion, and the laws and liberties of this kingdom :—

I. "By assuming and exercising a power of dispensing with and suspending laws, without consent of Parliament.

II. "By issuing and causing to be executed a commission under the great seal for erecting a court, called the Court of Commissioners for Ecclesiastical Causes.

III. "By levying money for and to the use of the crown, by pretence of prerogative, for other time, and in other manner than the same was granted by Parliament.

IV. "By raising and keeping a standing army within this kingdom in time of peace, without consent of Parliament, and quartering soldiers contrary to law.

V. "By violating the freedom of election of members to serve in Parliament.

"All which are utterly and directly contrary to the known laws and statutes, and freedom of this realm."

The Lords Spiritual and Temporal and the Commons declare :—

I. "That the pretended power of suspending of laws, or the execution of laws by regal authority, without consent of Parliament, is illegal.

II. "That the pretended power of dispensing with laws, or the execution of laws by regal authority, as it hath been assumed and exercised of late, is illegal.

III. "That the commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other commissions and courts of like nature, are illegal and pernicious.

IV. "That levying money for or to the use of the crown by pretence of prerogative, without grant of Parliament, for longer time or in other manner than the same is or shall be granted, is illegal.

V. "That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law.

VI. "That the election of members of Parliament ought to be free.

VII. "That the freedom of speech and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.

VIII. "That the redress of all grievances, and for the amending, strengthening and preserving of laws, government ought to be held frequently."

In this document the crown was settled on William and Mary for life, then on Mary's children, and in their default on the Princess Anne of Denmark and her children ; and in their default on the children of William by any other wife ;

and at the same time it was enacted that no papist, or protestant who married a papist, could inherit or possess the crown.

Here we find again laid down the old principles of English government, no changes in the law or levying of taxation without the consent of Parliament, the freedom of election, freedom of speech and frequency of meeting of that body, and there is added to these the statement, that without consent of Parliament no sovereign may keep an army in time of peace. That is all; but that in 1688 a standing army should still be an anomaly in England marks the difference between the history of freedom in England and on the Continent.

In the tone of the Bill of Rights there is something very remarkable. It is merely an assertion of fact, such and such things are illegal, such and such things are beyond the competence of the king, but there are no proper restrictions on his power, such as that Parliament should meet at fixed times, or that the king's ministers should be chosen with the consent of Parliament, such as are to be found under the Plantagenets. It is simply stated that Parliament is to be held frequently and the appointment of ministers is never mentioned at all. This is very strange; but it is very significant. At the very moment when Parliament gained its final victory over the crown, no notice seems to be taken of the very points which seem of most importance, which were, indeed, the very pledges of victory. It was very English to do this. There is no bluster or flourish of trumpets; but the reality of victory is there, and the settlement was all the more permanent because its exact terms were left unstated.

On the surface, the Revolution of 1688 appeared only to have transferred the crown from James II. to his eldest daughter and her husband, and to have again laid down

the time-honoured principles on which government had for ages been supposed to have been conducted ; but in reality it meant much more than this, and it was just because the men who carried out the change, though unenthusiastic, were eminently practical, that they contented themselves with the minimum of disturbance, but did what they had to do so as to make it thoroughly effectual. For the Revolution of 1688 was a real revolution, though it introduced no new principle, since it provided what was wanting before, a practical way of carrying into effect the principle which had all along been acknowledged. But this revolution could never have been carried out so effectually, if it had not, in outward appearance, somewhat diverted the minds of the nation from the real issue. To the many, the revolution meant the expulsion of James II. and his male descendants from the throne ; to the few, it meant, besides this, the substitution of the Parliament for the King as the really supreme power in the country. The first of these changes absorbed all interest, the second was hardly noticed at all.

That the whole nation, Whigs and Tories, should have joined in withstanding James was in itself very remarkable. That the Whigs should resist the king when he broke the law was natural enough ; but that zealous Tories and still more zealous churchmen, men who had preached Sunday after Sunday the doctrine of non-resistance, should have joined the movement, was a tremendous shock to the conscience of the nation. It reduced the High Tory theory to an absurdity, and ever afterwards discredited their position. But so powerful was the force of previous habit, that so soon as the actual pressure of James' ill conduct was removed, many of his opponents returned to his side, and of the clergy a very large number chose to give up their preferments

rather than to acknowledge his successor, who was merely the creation of Parliament and was not the king by divine right.

Meantime, while the eyes of the nation were fixed on the struggle in Ireland, or on the bitter strife between Whigs and Tories on minor points, Parliament was engaged in carrying out the practical part of the revolution.

The first essential was to make the control over the purse real, permanent, and effectual. To do this they carried a step further the principle of appropriating the supplies. Constant troubles had arisen, because the king had been expected to supply, out of his revenue, not only the expenditure of the court but a large number of other expenses, which rendered it extremely difficult to trace extravagance or dishonesty to its source. To get over this, William's Parliament appropriated a certain proportion of the revenue to the expenses of the court and government, and for the rest they began the plan of having estimates laid before them of the probable expenditure, and forbidding the Lords of the Treasury, under heavy penalties, to divert the sums voted for one purpose, to another. But even with these restrictions an important safeguard would have been omitted had not Parliament rigidly adhered to the plan of voting all taxes, with the exception of the hereditary excise, for a limited period, which soon became one year. In this way the control of Parliament over expenditure became absolute, not by reason of the statement of its right being any stronger than it had been under former kings; but because it had at length been discovered how to apply the right in practice in such a way as to make it really effective.

And this brought with it an almost more important result. We have seen how king after king had tried to evade calling Parliament, and how the enactments under the Plantagenets,

and the Triennial bill under the Stuarts, had alike been ineffective to secure its regular meeting. This difficulty at once vanished ; for no sooner were supplies granted, not for life but for one year, than the whole fabric of government would have melted away, had not Parliament been summoned year by year to Westminster to renew the grants. Instead of the old difficulty a new one was introduced. The Long Parliament had passed a triennial Act mainly to force the king to summon Parliament every three years ; William III.'s Parliament passed their Triennial Act mainly to prevent the king, when he got a Parliament to his mind, from keeping it permanently, as Charles II. had done, instead of appealing to the people in a fresh election.

But by another arrangement, made under William III., an additional safeguard for the meeting of Parliament was provided. It has been shown that by the Bill of Rights, the sovereign was forbidden to keep a standing army during the time of peace without the consent of Parliament. The members, however, were not so illogical as to deprive their country of a defence which the progress of time and the practice of foreign nations rendered necessary. But in allowing the king to have a standing army, they took great care that it should never be used against the liberties of the country. For in passing a Mutiny Act which permitted the king, on account of the special dangers of the time, to enroll soldiers and to maintain discipline by martial law, they limited its operation to one year, and so, if the Parliament did not meet, not only would the revenue of the crown come to an end, but its army would melt away.

In this way Parliament secured a most effective control over the expenditure and military establishments of the country. It yet remained for them to secure a similar control over the law courts. Though the removal of the Courts of



Star Chamber and High Commission had got rid of two great engines of oppression, the ordinary law courts of the country had under the later Stuarts, and indeed in earlier times, been, when cases in which the crown was a party had been tried, scenes of gross injustice. This was due to three causes—(1) the unfair appointment of jurymen; (2) the unfairness of the procedure of the court to the accused; (3) the partiality of the judges, who were appointed or removed by the king's pleasure. All these points had been brought into question at various times; but they were for the most part removed under William III. (1) In the Bill of Rights it was enacted "that jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders." (2) By the Treasons Act of William III. it was ordered that the accused should have, five days before his trial, a list of the witnesses and a copy of the indictment, and be allowed to examine his own witnesses upon oath. (3) In the Act of Settlement which arranged that, as Anne's children were all dead, the succession should pass from her to the Electress Sophia, it was enacted that the judges should hold their offices for life, be paid fixed salaries, and should only be removable on the petition of both Houses of Parliament. It is almost impossible to exaggerate the effect on the working of the constitution, which was made in consequence of the effectual control which Parliament now exercised over every part of the administration, but the consideration of that change must be left to a subsequent chapter.

## CHAPTER XVII.

### RISE OF PARTY GOVERNMENT.

BEFORE William III. had been many years on the throne, he realized that the recent changes had placed the policy of the government absolutely at the mercy of the House of Commons. This was the great revolution which had followed the acquisition by that body of complete control over the purse. Even when that control was imperfect, the Commons under Charles II. had been able to render the position of ministry after ministry untenable; but when they had reduced the control to a system, and had so arranged that at the end of each year the revenue should cease and the army disband, unless the king could prevail upon Parliament to vote fresh supplies and to renew the Mutiny Act, it was utterly out of the question for the king to act long in defiance of the majority, and the necessary corollary followed that the king must make up his mind to give up his free choice and shape his policy according to the wishes of that party which could command a majority in the Commons, whether that party were Whig or Tory. Such, however, was by no means William's intention at his accession. He wished to be the king not of a party but of the whole nation, and he was far too able a man to sit down quietly and allow his policy to be fixed for him.

Accordingly, the first years of his reign witnessed a tremendous struggle on the king's part to stave off the logical consequence of the revolution which he had been the chief means of bringing about.

William's intention was to form a mixed government, partly because it only seemed right that he should be able, without respect of party, to employ the best talent he could find, and partly because as both parties had joined in the revolution, he hoped by employment in his service to keep the leaders of both true to his allegiance. This plan was strictly in accord with the traditions of the constitution, which regarded the ministers as the king's servants, solely appointed by him, and indeed acting in his place. There was no idea of the ministers forming in any way a corporate or united body; each was separately appointed by the king and was removable by him at his good pleasure. From the opposite point of view, the Commons regarded the ministers singly, and had no notion that an attack upon one in any way jeopardized the position of another. But before the new state of things, this theory was found untenable. Do what he might, William discovered that when the majority of the Commons were Tory it was impossible for his Whig ministers to get their wants supplied, or when Whigs were in the majority for Tory ministers to hold their own; and little by little the conviction was forced upon him that ministers must be chosen exclusively from one party, and that party must be the one which had a majority in the House of Commons. This was party government.

The credit of having first put the doctrine into words is due to the elder Sunderland, the astute but unscrupulous minister of James II. In 1693 he advised William, as the only way out of his difficulties, to form a united Whig ministry. To do this, however, required time. To dismiss

the Tories wholesale would have flung them into the arms of James, so the change was gradually brought about, and it was not till 1697 that the ministry, on the retirement of Godolphin, became wholly Whig. A change in the temper of the House of Commons again affected its character. The Tories were still very strong in the House. An attempt of the Whigs to undo the mischief done by Charles II.'s forfeiture of the charters had been frustrated in consequence of their vindictive zeal against those who had benefited by the change; and hence the Tory corporations, who owed their existence to the injustice of Charles, still continued to return members of their own party. These men were, of course, hostile to the government, and they found many malcontent Whigs who under pretence of fearing a new despotism inveighed against William's standing army. This coalition proceeded to interfere in every department of State. They forced the reduction of the army; they sent home the Dutch guards; they attacked William's grants to his friends; and what is most important from our point of view, they forced William to call some members of the Tory party into his ministry. Encouraged by this success, they impeached the leading Whigs, but they had overshot their mark; the recognition of the son of James II. by Louis XIV. caused a reaction in William's favour, and a second time William entrusted his counsels to a wholly Whig administration.

Still the lesson was not learnt. Marlborough tried to work with a mixed ministry; but he failed just as William had done; and, Tory as he was, he found it necessary to change his colleagues for Whigs, for that party alone could maintain a majority. From his time the principle was fixed not by choice but by necessity, and it became an axiom of English politics that the party which has a majority of the

House of Commons should be that from which the sovereign chooses his ministers.

When the question had been settled, two others immediately succeeded it, one theoretical, one practical. First, were ministers to be members of Parliament? Secondly, how were majorities to be kept together? and these two questions were to a certain extent the same.

Now that it was clear that the policy of the day was determined by the majority in the Commons, the composition of that majority became a question of paramount importance. The views of the House were determined in two ways, first by the influence brought to bear upon the electors; secondly, by the influence brought to bear upon the members. In the first of these, the crown had distinctly got the start. Since the time of Edward VI. it had steadily created rotten boroughs as long as new boroughs were created, and in other constituencies, which were not so distinctly rotten, the crown used its influence, by the gift of places and emoluments, by intimidation and by direct bribery, to influence the votes of the electors. But this was not a game in which the crown had a monopoly. It had a formidable rival in the wealthy nobles and gentry, who did all they could, and often very successfully, to establish their influence over the boroughs in their immediate neighbourhood. In this way Sir Robert Walpole became the recognized owner of three boroughs, many others did the like; and in time it came to be thoroughly recognized that some boroughs were free, others were under the influence of the crown or of some individual, and others were absolutely in the gift of crown or commoner just as much as if they had been livings. This state of things made the organization of a party a work of high art. The crown or the ministers influenced

the borough mongers, and the borough mongers manipulated the boroughs, till from the highest to the lowest, an election was looked upon as a time for the universal granting of favours, the satisfying of the rich, the bribing of the poor, and the intimidation of the weak.

But corruption did not end when the election was over. Members who were elected by corruption were in their turn corrupt, and, having won their seats by bribery, were prepared to sell their votes to the highest bidder. It is a melancholy idea that just when Parliament had secured control over the affairs of the nation, it should immediately have become unworthy of the trust. But it is not far to go for a reason. Before the Restoration there was little or no bribery, for there were no organized parties, and the members were for the most part engaged in struggling with the king for rights which were far too valuable to be parted with for a bribe. Fancy Charles I. trying to bribe the Long Parliament to submit to ship money! But no sooner was the main battle won, and parties had begun to form themselves in lines, which though distinct enough had a sort of neutral ground between them, and struggles took place about matters which did not directly affect the pockets or persons of the members, than there appeared a numerous class of persons who were willing to vote one way or another for a consideration. It is no great wonder. Human nature is very much alike; and when members saw that owing to the secrecy with which parliamentary proceedings were conducted, and the distance they were from their constituencies, their friends at home would know nothing of what they did, the "means to do ill deeds" had its natural results, and ill deeds were done.

The chief offender in the matter of bribery was the crown. It had at its disposal endless sources of influence. The

delicate minded nobleman might be raised a step in the peerage; the country gentleman might be made a baronet, his brother a bishop or his son an officer in the army, and with coarser natures there was a supply of money from the king's private purse which could outbid any individual. In this matter Whigs and Tories when in office were on an equal footing of iniquity. Danby, a Tory, has the credit of beginning, but the system was carried on by William III.'s Whigs, and the greatest organizer of the system, Walpole, was a Whig too. To deal with a grievance so intangible, and in which so many were involved, was too hard a task for the Commons of William III. ; but there was one special method of influence which they viewed with great jealousy, and which they thought they saw their way to remedy.

This was that species of bribery by which the court sought permanently to attach to its service members of the House of Commons by investing them with some office under government, which might or might not involve duties, but which invariably brought with it a salary. The number of such places, large in the time of Henry VIII., was steadily increasing, as government became more complicated. As its sphere became more extended, this source of influence steadily increased, and the Commons felt that unless some check were put upon the practice, the ministry of the day would have at its back a whole army of minor officials, all holding seats in the House given them by the influence of the crown, and permanently attached to the fortunes of the ministry by the receipt of a salary which would be forfeited if their support was withdrawn.

To check the growth of the evil, on the creation of a new Board of Revenue in 1694, the members were disabled from sitting in the House of Commons, and in 1699 the dis-

ability was extended to the commissioners and some other officers of excise; but the Act of Settlement of 1701 gave the Commons an opportunity of getting rid of the evil at one sweep, and they introduced a clause which after the death of Queen Anne, was, on the accession of the Princess Sophia or her heir, to absolutely forbid any individual who held any office civil or military under the crown to sit in the House of Commons. This clause would no doubt have been thoroughly effectual for curing the evil against which it was aimed, but it is one of the truest maxims of legislation that for one result of a law which is foreseen, there are at least two which are unexpected, and the Commons hardly thought that had their law been enforced it would have done away with one of the most advantageous features of the English constitution. It is very curious to notice how rarely contemporaries see the result of what is passing under their own eyes. At the very moment when the Commons under Henry IV. were showing how effectually the king was controlled by having to appeal to Parliament for money, they were doing their best to persuade him to deprive them of the check by confiscating the property of the Church; the prospect of no more taxes, a relief which would have deprived them of their sole remaining power, was the main inducement held out to the Commons of Henry VIII. to allow the dissolution of the monasteries; and now at the very moment when party government was being established, and a *modus vivendi* had been discovered for king and Parliament, the Commons were passing a rule which would have resulted in a permanent deadlock between the two.

In attempting, however, to make a complete separation between the legislative and executive functions of government, the Commons were only carrying into effect a theory



of the English constitution which was destined to be received as the truth for many years to come. When, on the separation of the United States, American statesmen were framing a constitution, they conceived that they were best imitating the English constitution, when they created, on the one hand, a president answering to the English king, only elective, and gave him the right of appointing what ministers he chose, and, on the other, a representative assembly which could only get rid of the president and his ministers by the process of impeachment. The result is constant friction: the ministers cannot explain to the House what they want, the House cannot ask questions of the minister himself. It is a matter of letter writing, and of all means to promote misunderstanding letter writing is the worst. Again, both in asking for taxes or for laws, the ministers, in not being able to explain their views, are at an enormous disadvantage. The whole method of government is different, and were it not for the extreme simplicity of the United States politics, the results of the plan would have been most disastrous.

Now this is exactly the system that the exclusion of Placemen Clause in the Act of Settlement would have introduced into England. And worse, for in America at any rate, the president and the House of Representatives, at all events at the moment of election, may be supposed to represent the views of the nation; but here, the king being hereditary, there would not be the slightest guarantee that his views would agree with those of his Parliament, and right or wrong the ministers he appointed would have no chance of actually in person persuading Parliament to support them. Imagine for a moment the position of Pitt or Walpole outside the House of Commons. It is true that if the king's ministers chanced to be peers they might sit in the Lords; but the House of Commons was becoming more dominant

day by day, and to persuade the House of Lords was very different to persuading the representatives of the nation. All these considerations, however, concern points of practical working, and led away by the notion that in an ideal State the legislative, the executive and judicial functions should be separate, the Commons acted according to what they thought was best, and rigidly excluded all placemen from the House. Happily, however, the Act of Settlement was not to come into effect till Anne's death, and as her reign went on, it began to dawn upon the House what a revolution would be caused by the absolute expulsion from their body of those members who held office under the crown. When brought face to face with such a possibility, the Commons changed their minds, and in 1706 a Bill was brought in to modify the Placemen Clause in the Act of Settlement. Recognizing the advantage of allowing the ministers of the crown to sit in the Commons' House, they at the same time attempted to provide means, on the one hand, to give the electors a chance of refusing to re-elect them if they disapproved of the appointment, and, on the other, of preventing the multiplication of offices by which the crown could extend its influence among members of the House.

To do this they enacted : (1) That if any member of the House of Commons accepts any office of profit under the crown, except a commission in the army, he shall be deemed to have vacated his seat, and a new election shall take place, at which he is eligible for re-election ; and (2) that no person holding an office created since October, 1705, shall be either elected or re-elected a member of the House. Lastly, to check bribery, they excluded from the House any person who held a pension during the pleasure of the crown. These enactments were only passed after considerable controversy with the House of Lords, and had the Commons been left

to themselves, they would have still further limited the number of officials who might hold seats in the House.

The passing of this Act marks the final settlement of the lines on which the English constitution was to rest. From this time forward it was an understood thing that the government of England was to be carried on by ministers capable of sitting in either Houses of Parliament, appointed nominally by the king's will, but practically always chosen from that party which was capable of commanding a majority in the House of Commons.

It must not be supposed, however, that government had taken its final form. Party government as we find it in 1708 was but a very rough and ready institution compared with party government as we find it now. In law, the functions of the king, ministers and Parliament are much the same now as they were then, but how different is the reality. It is the growth of the unwritten constitution and the changes which have taken place in the real position, functions and constitution of the sovereign, the ministry and Parliament, that we have mainly to deal with in the remainder of the work.

The consolidation of party government was immensely helped by the personal character of the four sovereigns who follow the revolution, William III., Anne, George I., and George II. William III. was by nature the last man in the world to play the rôle of a constitutional sovereign. It is not often that the sovereign of a constitutional kingdom finds himself to be a head and shoulders greater and wiser than any of his ministers ; but it is hardly too much to say that it was so with William III. Yet it was this king who had the tact to see that he must give way to the wishes of his Parliament, and that if he could not get the House to go his way, he must go with it, and choose ministers who would

be acceptable to its majority. Compared with William III., Anne was thoroughly fitted for her post. She was perfectly willing to surrender her will to her favourite minister, but the question was, would that minister be acceptable to Parliament? Happily for England the man in whom she first reposed her confidence was Marlborough. That great man commanded the confidence of the nation, but even he found it needful to gradually change the character of his ministry, in order to make it accord with the views of the majority of the Commons. Again the tide turned, and both Anne and the nation gave their confidence to the Tories; but whether Marlborough, or Harley and St. John, were in power, it was the ministry and not the queen who guided the destinies of the country. Again, at Anne's death, though a king again reigned, the same principle was followed. It has been the fashion to scoff at George I. and his son because they took little interest in English politics, and so long as Hanover formed the first interest in foreign politics, left home affairs in the hands of their ministers. Is it not a little hard to abuse our king for a fault from which we have gained? Supposing the first Georges had tried to play the part of William III., how would Parliamentary government have fared? Even as it was, Walpole had a sufficiently hard part to play. He had to fight a strong opposition in the Commons in front, while he guarded against the court intrigue in the rear. For it was still regarded as an axiom that the support of the king was the chief prop of the minister, and though the ministry could practically only be chosen from the leading party, the individual ministers were distinctly the choice of the king. Besides, the condition of parties under George I. and George II. was most curious. At his accession, George I. had made no attempt to imitate William III.'s effort to employ both parties, but had given his confidence exclusively

to the Whigs, and by so doing had driven almost all the Tories to become Jacobites. For years there was hardly any opposition on the part of the Tories in Parliament ; but there was an opposition for all that, for Walpole's greed of power drove all rivals from his side, and they, in revenge, formed an opposition, and waged an intestine war with the members of their own party. Happily the feud between the reigning sovereign and the Prince of Wales, which characterized the reigns of the first three Georges, gave the malcontents a rallying point and prevented them from going over wholly to the enemy. At length Walpole fell ; but his fall made no difference in the constitutional position of the king. George II. reigned, but he did not govern ; and Pelham, Newcastle and Pitt were the real sovereigns of the country.

Meanwhile the character of the ministry itself was changing. We saw that originally the Cabinet was composed of those members of the Privy Council to whom the king's special confidence was given. As a rule but not invariably they held some office under the crown. But it did not follow that all officials were members of the Cabinet or even of the Privy Council ; nor even was the Cabinet always composed of holders of the same offices. By degrees, however, certain customs sprang up. First, the holders of certain offices came to be regarded as the government ; second, the most important members of the government attained a certain recognized position as members of the Cabinet ; and, thirdly, the holder of a particular office became recognized as the head of both cabinet and government. This office was that of first Lord of the Treasury. Ever since the Norman Conquest some minister has been recognized as in some way the king's chief adviser. First, it was the Lord Chief Justice ; then it was the Lord Chan-

cellor, who remained most prominent under the Plantagenets. Under the Tudors it was sometimes the Chancellor, then the Treasurer : Wolsey was Chancellor, Burleigh was Treasurer. Under the Stuarts the Chancellor again came to the front, and Lord Chancellor Clarendon was the last great Chancellor. After his fall the minister who presided over the public purse was the most important, and Lord Treasurer Danby was distinctly the leading minister of his day. It is curious to note how justice, law, finance, became in turn the most important things in the country. The care of the purse was, however, too responsible a work to be often entrusted to one person, and as early as the reign of James I. the office had been put in commission. This was often done under Charles I. and Charles II., and since the fall of Danby in 1679, it has been the invariable rule, the commissioners being called Lords of the Treasury and their chairman being styled First Lord. It was not long, however, before the First Lord acquired all the importance that was formerly possessed by the Treasurer. For a time his pre-eminence was disputed by the Secretaries of State, but he finally triumphed, and since the time of Walpole, the First Lord of the Treasury has invariably been the head of the government, a fact which is recognized by the popular title, unknown to law, of Premier.

While this was going on another change of great importance was progressing. The government was acquiring a corporate character. The process by which it did this was very slow. Originally the king's ministers were completely independent of one another. Each was appointed or dismissed solely with reference to the conduct of his own office ; but by degrees, mainly because the ministry was more and more composed of members who thought alike, a feeling of *solidarité* grew up, and it came to be understood that ministers stood by one another, and that an

attack upon one was an attack upon all. During the reigns of George I. and George II. this could hardly be regarded as more than a tendency; there were numerous instances of ministers voting against their fellows, and even in the reign of George III., Lord Thurlow never considered himself bound either to support a measure or to resign, because his colleagues were agreed upon it.

Meanwhile the new importance which the House of Commons had gained, resulted in differences between it and the Hereditary House. At the accession of Anne the lay peers numbered 162. A majority of these were Whigs, and no sooner did the election of 1710 return a Tory majority in the Commons than the two Houses were at a dead lock. To get over the difficulty, Harley used the prerogative of the crown by persuading Anne to create twelve new Tory Peers, who forthwith altered the balance of parties. But this summary process was not relished by the Lords, and in 1719 they made a determined effort to prevent a repetition of the insult. With this view they passed a bill which ordered that the House of Lords, which then numbered 178, should never be raised to a higher number than 184. Had this bill passed it would have had two most important results. It would have completely taken it out of the power of the minister of the day to make the Lords give way to the House of Commons, when the views of the two differed, that is to say the Hereditary and not the elective chamber, would have had the dominant voice in all affairs. Secondly, the rule that had always obtained in England, that no bar existed to prevent a commoner from rising to the peerage, would have been done away with, and the Lords would have become an exclusive body. Happily for us the Commons fully appreciated the danger to their own prospects, and that made them save the constitution as

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well, and thus the leading voice in the State was preserved to the representatives of the people.

But this expression "representatives of the people," brings us to a new inquiry. The House of Commons was the leading power in the nation. It and not the king determined the policy of the State. But did the House of Commons represent the nation, and if not, whom did it represent?



## CHAPTER XVIII.

### THE INFLUENCE OF THE CROWN.

It is very doubtful whether the English nobility ever exercised such a decisive influence over the politics of the country for so long a period as they did from the accession of George I. to the acceptance of the premiership by William Pitt. No doubt there were many times when the nobles upset the government, as under Henry III. or Richard II., but they had never before swayed the destinies of the country as they did between 1714 and 1783. It was distinctly the period when the government approached nearer to an oligarchy than at any time before or since. Never before had the nobles found themselves unopposed. In the Middle Ages they had to struggle with the king; in later years they have tried at times to resist the people; but at no other time have they met with two successive kings who allowed them to consolidate their power, or a people who have been so content to defer to their wishes. The natural rule in political history seems to be that monarchy, when useless or iniquitous, is succeeded by oligarchy, and oligarchy in its turn by democracy. It was so at Rome—it was so in many places in Greece; and England, constitutional as she was, was not destined to form an exception to the rule. The revolution of 1688 was essentially aristocratic. The men who signed the invitation to William

represented the oldest families in England; it was the influence of the nobles, working through the House of Commons, which forced William to adopt party government; and the nobility were too shrewd to hand over, unasked, the power which they had thus attained. With the exception of a very few struggles, such as that about the Aylesbury petition, which affected the position of the House of Lords as a law court, or that about the Peerage Bill, which affected the chance of the commoners becoming peers, the relations between the two Houses were, as a rule, most friendly; and after the collapse of the Tories on the accession of George I., there was hardly any serious political difference at all, though Walpole might be stronger in one House than the other.

Nor was it at all surprising that this should be the case. Political power always tends to gravitate into the hands of the most powerful, and in the eighteenth century the Whig nobles were, without doubt, the most powerful class in the kingdom. In point of wealth none could compare with them. They had broad acres which yielded regular rents; their earliest rivals, the wealthy nabobs from India, were as yet very rare; while the millionaire manufacturer was unknown. Now, the nobility are not as a class the wealthiest subjects, manufacturers vie with them in individual wealth, and far outnumber them collectively. Nor was there in those days an inclination to rivalry between nobility and wealth. It was one of the strongest bulwarks of the Hanoverian throne that there was the closest alliance between the titled Whigs and the wealthy merchants of the city, and one of the first symptoms of the fall of the nobles was the rupture between the House of Commons and the corporation of London. In political intelligence, too, the nobility were far in advance of the rest

of the nation. They were the only class who constantly visited the metropolis, and London was then, infinitely more than now, the centre of the kingdom.

If to do what you like without any one to gainsay you, is to be an absolute ruler, the nobility, as a whole, were far more the absolute rulers of England than any king had ever been. They ruled the king, for they kept all confidential offices about the court for themselves, their wives, or their families. They directed the policy of the country, for they reserved to themselves all the most influential places in the ministry. Pitt only forced himself into the charmed circle by the strength of his personal character, and Burke, the champion of the Whigs, was never admitted into the Cabinet at all. They ruled the House of Commons; for there were few counties where a Tory had a chance, and none where a man unconnected with the aristocracy was likely to be elected, while of the boroughs a large proportion were in the gift, to all practical purposes, of one nobleman or another. They ruled society; for the word of a nobleman was law, and the manners of the nobility gave the tone. They ruled literature, for no writer could hope to live by the sale of his works, and the Whig nobility alone could pay for the luxury of being praised. They had no rivals in the Universities, for Oxford and Cambridge were asleep; nor in the clergy, who were given over either to hoping for preferment, or to making life pleasant; nor in the gentry, who were too much of the Squire Western stamp to wish to trouble themselves as long as they were let alone; while the common people, rarely able to read, coarse in their pleasures and ideas, and as yet thoroughly loyal to the powers that be, as represented by the great men of the county, took no interest in politics if they had no vote, and if they had, looked on an election as a time of unlimited beer.

In a nation such as this, and the English nation of the first half of the eighteenth century is not a nice subject for contemplation, the nobility reigned supreme. But theirs was, on the whole, a beneficent despotism. They secured the persons and pockets of the subject by the revolution of 1688, and his creed by the Toleration Act of 1689, and the repeal of the occasional Conformity and Schism Acts in 1718. Besides this they kept England out of great wars, and enabled her to recruit herself after the efforts of William and Anne. But it was inevitable that a waking up should take place, and presently the nobility found themselves attacked on both sides, by the people, who demanded a better representation in the Commons; by the king, who demanded to have a larger share in the government of the country.

George III. ascended the throne with the distinct intention of upsetting the system of party government which had been consolidated during the two preceding reigns. The maxim of constitutional rule is that "the king reigns but does not govern," while George from infancy had been brought up on the advice, "George, be king." His was one of those natures which rarely forget any idea which has been impressed upon them in youth, and to the day when his malady finally disabled him for public affairs, George never for a moment forgot his motto. Nor was he without advisers of weight who thought that in doing his best to overthrow party, he was doing a good deed for his country. Two classes of people were desirous of seeing its overthrow, the Tories and the discontented Whigs.

The accession of George III. coincided with a very remarkable revival of the Tories. Since 1745 the Jacobites, as a real living party, had ceased to exist. The men who remembered a Stuart on the throne were becoming fewer

and fewer, the discrepancy between a party who supported the Church of England and a leader who was a member of the Church of Rome, became more marked; the failure of the rising of '45 showed the hopelessness of the cause, and the great mass of the Jacobites thought better of it and came over to the winning side. But though they abandoned their prince, they brought their principles with them, and were prepared to support a king who, within certain limits, claimed that he should not be entirely kept in leading strings by his own nobility. Their views were embodied in a book called "*The Patriot King*," written by St. John, Lord Bolingbroke, the great leader of the Tories and Jacobites. This book advanced the plausible theory that the king should look upon himself as above party, and should choose as his ministers the best and ablest men in the kingdom, quite apart from their political creed. This was an excellent theory, but it had been tried by a very able man, William III., and was found not to work in practice. Unfortunately for the Whig nobles they had allowed a little rent to be made in their armour. Carefully as they had kept anything like Toryism out of the king's court, they had been either inadvertent or weak enough, to allow the education of Prince George to be undertaken by Tories, and only awoke too late to the consequences of their mistake. From his tutors George learned to look on party as faction, and on the power of the Whig lords as the great obstacle in the way of his playing the noble part of a patriot king. One of the chief of his advisers was Lord Bute, who was thoroughly imbued with these ideas, and saw a way of turning them to account for the purposes of his own ambition. With these notions as his creed, and with Bute as his ally, George set about the task of attacking the Whig stronghold.

It was by no means an easy business. Fifty years of office had secured to the Whigs all the approaches to their citadel. Every office in the gift of the crown was in Whig hands, from the secretaryships of State to the collectorships of excise. In the House of Peers the Whigs ruled supreme, and they were masters of the House of Commons. A momentary source of rupture had been removed, when Pitt, the great commoner, was admitted to the Cabinet, and the government in power, which rested upon the talents of Pitt and the corruption of Newcastle, was as strong and popular as a government well could be. An opening, however, was given to the king by the dissensions between the Whig nobles themselves. Prosperity had destroyed the union of the Whigs. Though apparently strong they were in reality but weak. A close examination of their ranks brought to light gaps between which the king might hope to penetrate; and within a short time the gaps widened under his attacks, and the Whig party distinctly divided itself into several sections, who followed the lead of their own chiefs. These factions were afterwards known by the names of Rockinghams, Chathams, Grenvilles, and Bedfords.

The first thing to be done was to break the strong administration which the king found in power. This was managed before George had been king a year. Pitt, the great commoner, who had forced himself through the phalanx of nobles, and who as Secretary of State had won popularity by his wonderful successes against the French, wished to declare war against Spain. As events showed, Pitt was right, but the king opposed him at the time, and Pitt resigned.

Against Newcastle a different weapon was used. As we have seen, the Whig magnates had consolidated their power by an elaborate system of patronage. The growth of the army, the rise of the colonies, the increase in the revenue

and the civil establishments, had placed in the hands of the crown a vast number of appointments which were used for political purposes. Technically these appointments were in the gift of the crown ; practically they had been used by the minister of the day to strengthen his party and to reward his followers. But how if the king insisted upon exercising his own right, and turning what had formerly been the support of the ministry into a weapon against it ? This was what George did ; and he did it with all his might. Few men could compete with George III. in aptitude for routine. As a clerk he would have been invaluable. He loved business, and is said to have had quite a passion for signing his name. But he had other qualities which raised him above being a mere clerk. He had an excellent memory, and was a shrewd judge of character. No one could remember better than the king how members had voted, or could tell more correctly the influence which always swayed the election at a particular borough ; and these qualities made him a first-rate electioneering agent, while his knowledge of the character of public men enabled him to play off one against the other. Armed in this way, George set himself to undermine the Whig influence.

Of this weapon Newcastle was a master. He knew the price of every member to a nicety, and what was the form of currency in which each man's bribe was to be tendered. But in George III. he had his match. George worked with a will, and he soon showed Newcastle that he meant for the future to bestow for his own ends what the law said was his to give. And he used his powers well. Before long George had a body of men called "the king's friends," who held themselves aloof from party, and voted as the king told them. The command of this flying squadron gave the king immense power. If he chose to support

ministers, their majority was overwhelming, but it was more than likely that he would choose to put them into a minority. In a short time government was made impossible because the king's friends constantly voted against the king's ministers. George's object was not to get a strong administration, but to find a minister who would do his will, and minister after minister either gave up in disgust or was outvoted by the king's friends. Ministers were changed again and again. Newcastle resigned because he found that the king was disposing of the crown patronage without consulting the ministers, and as he said piteously, "How is one to speak to members when one does not know who has received a gratification?"

Then Lord Bute, the king's old tutor, became Premier. He made peace with France, which, although probably right, was thoroughly unpopular. In support of ministers the king made extraordinary efforts. Henry Fox undertook to manage the business, and by the grossest means a court victory was won. The king's friends to a man supported the peace, and it was made plain that if any member wanted anything for himself or his family, he had better join himself to their number. At first it was a hard fight till it was clear that Fox would carry the day, and then at last the peace was approved by 319 to 65. Then came the punishment of the vanquished. Newcastle himself, Grafton, and Rockingham were deprived of their lord-lieutenancies; the Duke of Devonshire resigned his, but did not save his name from being struck off the Privy Council. Nor did the proscription rest here; the wrath of the king against the Whigs reached even the humbler servants of the crown, and a sweep was made of the government offices, which would have rivalled that made by an American democrat on succeeding a republican president. By this means George



made it clear that he, and not the ministers of the day, was the fount of emolument and the controller of the pension list, and that swift vengeance pursued any luckless wight who dared to vote according to his old principles in defiance of the new power. Meanwhile Bute, frightened at his unpopularity, resigned, and the king promoted George Grenville, another member of the administration, to be premier, but expected him to act as the puppet of himself and Bute. As Lord Chesterfield said, "The public still looked at Lord Bute through the curtain, which indeed was very transparent."

Now the only chance to put a stop to this state of things was for the Whigs to make up their differences, and oppose a steady front to the king's friends and the Tories. Had they done this they might have forced the king to accept them as a body, but they did not, and so allowed themselves to be discredited in turn. Meanwhile, under the guidance of the king, Parliament was falling into great difficulties, and was beginning to show the vices of an oligarchical government. In defiance of the spirit of the principle that no one ought to be compelled to pay taxes which have not been voted by himself or his representative, they were trying to extract taxes from the American colonists, and they had committed themselves to a contest with Wilkes, in which they found themselves opposed to the law courts of the country.

Meantime the Whigs were utterly at variance. George would have been glad enough to get them to unite in his service if he could have done so, and made overture after overture to Pitt, but Pitt refused to help Grenville. Then Bedford and his friends joined the ministry, but a quarrel arose between George and Grenville, who was dismissed, and another attempt at a united Whig ministry was

made, but failed. Then George called in Rockingham and his section, on the whole the purest of the Whigs, and they made an effort to undo some of the mischief which had been done. But they were too weak. Unassisted by the other Whigs, hated by the king's friends, and embarrassed by the king himself, who made little secrecy of his dislike, they fell, before they had been in office a year. Then a mixed government was formed, with Grafton, a weak member of the Rockingham administration at its head, and supported by Pitt, who now took the title of Earl of Chatham, and his friends. Chatham soon fell ill, and Grafton, under the king's influence, was left to do what he liked. The attempt to tax the colonies, which had been given up by Rockingham, was again renewed, and the Commons, in defiance of the principle that "elections of members to Parliament ought to be free," as stated in the Bill of Rights, engaged in an attempt to prevent the electors of Middlesex from being represented by their chosen candidate, John Wilkes. Four times Wilkes was elected, and three times he was declared incapable of sitting. The fourth time the Commons went still further, and declared Colonel Luttrell, his opponent, who had only got 296 votes to Wilkes' 1143, to be duly elected. Shortly afterwards, Grafton, worn out by the satirical letters of Junius, and utterly disgusted with his position, resigned. Again the Whigs lost an opportunity of uniting, and Lord North, a Tory, the ablest and most pliant of Grafton's colleagues, consented to call himself First Lord of the Treasury and to act as the king's agent at the head of a group of minor officials.

Lord North's ministry lasted from 1770 to 1782, and made itself memorable by losing the American colonies. Selfish as the nobles might have been, they had never done anything equal to this, and the last ministry of George II.

was well remembered as the glorious administration of Pitt. Had George III. been a really able man like William III. it is possible that the success of his administration might have blinded the nation ; but the utter failure of his policy allowed men's eyes free scope to see the iniquity of the system by which his power had been obtained. But it was clear that to remedy the evil something more must be done, beside preventing the king from being able to maintain any ministry he liked. That was only half the battle. The House of Commons must be brought into accord with the wishes of the nation, and the force of public opinion must be made to bear upon its members. The prosecution of Wilkes had begun to open men's minds to the fact that parliamentary privileges were not an end but a means. Parliament was no more a sacred institution than royalty, and if it abused its power, there was a force beyond and above it, which had helped Parliament to reform the prerogative, and was prepared, if needful, to apply the same process to privilege.

Now the chief privileges of Parliament were, as we have seen before, control over their own elections, freedom from arrest, and freedom of speech. But if the right to control their own elections was used to keep out members duly elected by the people ; if the right of freedom from arrest was used to save the members from paying their just debts, or was extended to their servants and dependents, and even their rabbits, to the injury of their fellow-subjects ; and if freedom of speech was interpreted as the right of using their privilege to prevent the nation from knowing what was done by its representatives, then these privileges had outlived their time and had been turned into abuses. And there was no doubt that this was the case. The treatment of Wilkes, the notorious abuse of freedom from arrest,

the strenuous attempts of Parliament to prevent their debates from being published, all showed that Parliament, which was in former times the bulwark of the people against the sovereign, had in the moment of victory forgotten its obligations, and mistaken the object of its own existence. To put a stop to these evils two parties arose ; the watchword of one was the abolition of influence ; the cry of the other was reform.

The movement for the abolition of influence was made by the Rockingham section of the Whig party, and its chief apostle was Burke ; the first suggestion of reform came from Lord Chatham and his friends.

In his pamphlet on the causes of the present discontents, published in 1770, Burke showed clearly enough the cause of the disorder. The king's friends voted against the king's ministers, and made government impossible. The king's friends were kept together by the king's influence, and therefore the influence of the crown was the point of attack. The facts of the case were notorious, and had been so for years ; but so long as the influence of the crown could be used by the Whig leaders in the interests of their own party there did not seem to be much harm in it. It was quite a different thing, however, now that their own weapon had got into the king's hands, and was being used against themselves. As Horace Walpole tells us, "Everybody ran to court and voted for whatever the crown wanted." At first, however, the party made little way ; but by degrees public opinion began to be aroused. Gray, the poet, writing at Cambridge, said that he could remember nothing like the rapid changes of government, and the fluctuations in policy, since the early years of Charles I. The virulent letters of Junius overwhelmed the ministry with scorn. The publication of debates, which after a violent struggle with Parliament, was

finally yielded to the printers in 1771, threw light on the proceedings of the Houses, and helped to form public opinion. Still more the disastrous results in America roused popular indignation, and by degrees Burke and his friends found themselves supported by popular opinion. In 1780, backed by a large petition from the freeholders of Yorkshire, they won their first Parliamentary triumph, for in that year Dunning's motion, "that the power of the crown has increased, is increasing and ought to be diminished," was carried by 233 to 215. This was something; but when the descent was made from generals to particulars, and Burke brought in his Bill for economical reform, which recited the offices which ought to be abolished, the friends of abuse rallied in force, and defeated the measure by 233 to 190. The next year North resigned, and Rockingham, at the head of the most united Whig ministry of the reign came into power. They did not expect to stay in long, but they determined before they fell "to strike a good stout blow" at the king's influence both in and out of Parliament. To do this they took in hand the king's civil list, and divided it into eight classes, abolished an immense number of useless offices, such as that of king's turnspit, whose occupant had a seat in the House of Commons, abolished secret pensions, and curtailed the expenses of the court to such an extent, that without the least interfering with the comfort or splendour of the royal family, they diminished its expenditure by £72,000 a year. A frequent form of influence was that of granting government contracts to members of the House of Commons, and to stop this, no contractor was to be allowed for the future to sit in the House of Commons. Another source of corruption was the influence of the crown at elections. This was exercised in the most open way through the revenue officers, who numbered no less than 11,500 electors, and

could turn the scale in seventy boroughs. These were all forbidden to vote. These were splendid reforms, and they had their effect. The influence of the crown was most seriously curtailed, and henceforth the coarser forms of bribery were practically excluded from the Parliament.

It might have been expected that upon this the Whigs would have assumed their old influence. Such, however, was not the case. They fell mainly in consequence of their own dissensions. Rockingham's reforms were hardly passed when he died, and the promotion of Lord Shelburne, a member of the Chatham Whigs, to the lead, roused all the old enmity between the sections. Charles James Fox and Burke, who had been the chief support and ornament of Rockingham's ministry, refused to act with Shelburne, and actually entered into an alliance with Lord North to overthrow their old friends, and succeeded in doing so. Fox and Burke, who had formerly denounced Lord North as a political monster of the most horrible kind, were now seen joined with him in denouncing a minister who was pledged to their own principles, and who was negotiating a peace of which they had been the most strenuous advocates. They succeeded and came into power, but in doing so they utterly robbed their party of any respect which it had in the eyes of the people. The utter unscrupulousness of the Whig chiefs disgusted their most vigorous supporters, and it was seen, that could the king but play his cards well, he might win by popularity a victory more signal and more lasting than any he had gained by corruption.

But Fox and North saw it too, and attempted, now that the king had by their means been deprived of his influence, to get into their hands a source of patronage which should make them for many years more powerful than either the king or the people. The East India Company, a body

which had now become the ruler of a great empire, had long been in need of reform; but the coalition saw that while apparently reforming it, they could establish in their own hands a most formidable engine of corruption. The Company had for its own purposes gained great Parliamentary power, and by means of its vast patronage had tremendous influence. The plan of the coalition was to transfer the authority of the company to a body of seven commissioners to be nominated by Parliament (*i.e.* by their own majority) for four years, and afterwards to be named by the crown. In this way they hoped to have for four years unbounded power over Parliament, and at the end of the time to force the king to appoint their own friends.

It was an excellent scheme; but both the king and the nation saw the game. It was the most barefaced attempt of the majority to defy the king and the country; but it was very difficult to defeat, for the coalition had an overwhelming majority in the Commons. But George III. was not a man to stick at a trifle, especially when his influence was at stake, and this time he was fighting the nation's battle as well. In defiance of the forms of the constitution, he sent a message through Lord Temple to the members of the House of Lords to say, "that whoever voted (in the Lords) for the India Bill was not only not his friend, but would be considered by him as an enemy." The Lords threw out the Bill, and the coalition ministry was dismissed.

The story of the next few months is well known. How George III. called on young William Pitt, the son of the great commoner, to come to his rescue; how Pitt bravely struggled from December to March against an overwhelming majority in Parliament, and against the greatest speakers of the day; how the nation gradually woke to the fact that Pitt was fighting their battle, and how George III. became

popular for the first time in his reign ; how member after member came over to the winning side, and how, finally, the king dissolved the Parliament ; how one hundred and sixty of the supporters of the coalition lost their seats, and Pitt found himself supported by a majority more united and more compact than that which had supported any former minister of the reign, and more honest than that which had followed the lead of Walpole.

But the victory meant more than the triumph of the king,—it meant the complete overthrow of the system of government by the nominees of the great Whig Houses, and the end of the personal government of the king. For George did not attempt to interfere with Pitt as he had interfered with Lord North. In Pitt, young as he was, he found a minister whose views in the main coincided with his own, and who was gifted with as strong a will. Still there were numerous indications that the snake was scotched, but not killed, and that George's notion of his own rights differed in no way from what it had been in the days of Bute and North. Though the royal influence had been much impaired by Lord Rockingham's Act, it was still assumed on all hands that the good-will of the king was the strongest support of the ministry. In 1788, when George was for a time insane, it was taken as an axiom that the Prince of Wales, if he became regent, could and would turn out Pitt and put in the king's friends. In 1802, Pitt, though still popular with the country, was forced to resign because he differed with George III. on the question of Catholic emancipation. In 1811 the Prince Regent was again expected to change the ministry. In 1822 Brougham, in making a motion that "the influence of the crown is destructive of the independence of Parliament," could still assert that it had largely increased since Dunning's motion



in 1780. Even so late as 1834, William IV. dismissed the first ministry of Lord Melbourne, while they still commanded a majority in Parliament. But this is the last instance of such action, and we must now go back to trace the means by which the House of Commons was made to be a more faithful representation of the people who were supposed to send them.

## CHAPTER XIX.

### REFORM OF PARLIAMENT.

HAPHAZARD is a word almost too feeble to describe the method, or absence of method, by which the English House of Commons gradually assumed the form which it exhibited in the days of George III. The return of members, the selection of boroughs, the distribution of the franchise, were all equally anomalous. Yorkshire and Rutland alike returned two members each ; old Sarum, where not a vestige of a house was to be seen, sent two representatives, while Birmingham, whose vast area of thriving workshops and forges was densely crowded with human beings, sent no members at all ; at Preston every householder had a vote, and at the election of 1830, 7122 persons actually polled ; at London the largest number recorded was at the election of 1826, and only amounted to 8631. But if the result was anomalous, its history is perhaps still more surprising. Any one who now sees the eagerness of towns to send members, and the anxiety of gentlemen to get seats, and is led to imagine by this that the same eagerness had been shown in former times, and that a desire to have a share in the national assembly, either personally or through your representative, had always been one of the characteristics of Englishmen, and that to this patriotic feeling was due the great success of parlia-

mentary institutions in England for so long a time, would be sadly mistaken, and would be picturing to himself a condition of things, the exact reverse of what was the case. For it is hardly too much to say that during a long period Parliament was kept together and made to represent the country, not by the energy, but in spite of the supineness, of a large proportion of the people of England. For a long time it was the king who insisted that members should come to Parliament, because it was of more importance to him than to any one else, that Parliament should really represent the nation. For the Plantagenets looked at Parliament not as an end but as a means. They knew very well that to collect taxes without its consent meant rebellion, and possibly deposition and death, and they wanted Parliament to represent the nation, so that its votes might be binding on their subjects. They knew, too, that by an unwritten law they were forced to shape their policy more or less in accordance with what their people wanted, and their only chance in those days of finding out what their subjects thought, was by having a Parliament which really represented the nation. It was not enough to have only the nobles and the clergy, it was needful also to have the knights of the shire and the burgesses, and so the kings were forced as it were by the instinct of self-preservation to get a Parliament which would really represent England. But to do this the sovereigns had to struggle with a mass of inertness.

The advantage of representation was by no means realized at once ; it was only by slow degrees that it was thought any privilege. The members hated going ; the electors hated paying their wages. Most amusing stories are told of the difficulties which the sheriff encountered in sending his contingent to Parliament. He was ordered by his writ

to send two knights of the shire and two members for each city and borough within his county. The county usually elected members readily enough, though on one occasion the sheriff of Northumberland excused himself on the ground that all his knights were wanted at home; the real difficulty here was to get the members to go. And no wonder. It was no light thing to leave your home and estate and all your duties, which were numerous enough for a knight of the fourteenth century, to take care of themselves; to travel to London over what would seem to us almost unexplored wastes, rendered dangerous by bands of robbers; and when you got there to find yourself in a strange place, among people you did not know, and in an assembly where you were insignificant, and all this for no special glory and for the munificent recompense of four shillings a day. To bring the knights to London was as hard as to bring a prisoner to the assizes, and finally sureties had to be sworn for their appearance just as though they were to be tried for their lives. That Yorkshire sent only two members, was hardly thought a matter of grievance when it was considered that eight shillings a day, divided among all Yorkshire, was much less than had to be paid by the gentlemen of Rutland or Derbyshire.

But the sheriffs found it hard work to get members from the boroughs at all. The excuses sent up were as numerous as those offered to Cowper's parson on tithing day. Bad times formed a ready plea to the sheriff to induce him to keep back the writ, and if he sent it, some boroughs found that it might be more honoured in the breach than the observance. Torrington, in Devonshire, actually got a charter of exemption on the ground that it had never sent burgesses before 1348, whereas it can be proved that representatives had been sent nine times previously.

Richard II. exempted Colchester for five years on the ground that it had lately been put to much expense in repairing its fortifications. To put a stop to these irregularities, Richard II. had an Act passed which fined the sheriff for omitting to send due returns, and members for neglecting their duty. This Act did not have much effect, as is shown by the very short lists of members present in Parliament; but meantime Parliament was becoming more important, and with its importance the readiness to serve in it increased. Under the Lancasters, as we have seen, Parliament had a very important position; during the minority of Henry VI. it had a large control over the government, and when, during the wars of the Roses, it overturned dynasties and attainted whole factions, to be a member became an honourable distinction. The first instance of competition for seats is noted in a statute of Henry V., which forbade towns to send members who were not of the number of their own residents; but this statute was of no avail to check the tendency of the times, and as seats in Parliament became more valuable, the members of the county families began to compete for them, and as is shown by the Paston letters, boroughs were in great request among the gentry in the time of Edward IV., and the Rolls of Parliament show that in that reign a few burgesses of the rank of esquire had begun to sit for towns. No sooner was this the case, than two results followed. (1) The king began to do his utmost to influence elections in his own favour, and (2) the members who were eager to serve, agreed to give up their pay, and by degrees this practice died out; payments became very rare under Henry VIII., but instances are to be found at a much later period. Meanwhile the sovereign and the nobility and gentry had been contending for influence in the boroughs, and the growth of this influence was very much assisted

by the changes that had taken place in the method of election.

The writ for the election of the knights of the shire was addressed to the sheriff, and in the earliest times the election took place in the county court, the old shire-moot, of which the sheriff had since the Conquest acted as chairman. The reading of the writ was followed by the election of the knights which took place in open court. Though in theory the knights appear to have represented the lesser barons, there seems to have been no exclusive right to vote, and all who were present might take their share, though no doubt the great men had the chief influence; but the sheriffs did not by any means have it all their own way, and when Richard II. ordered that no one was to be elected "without the approbation of the king and his council," they were obliged to declare that the commons "would maintain their ancient privilege of electing their own representatives." But this casual method of election led to disturbances, and in 1430 a statute was passed which declared that since elections of knights of the shires had of late "been made by very great, outrageous, and excessive number of people" who were for the most part of "small substance and of no value," the franchise is for the future to be restricted to freeholders to the value of forty shillings. This is the origin of the forty shilling freeholders who continued to be the sole electors in the counties till 1832.

In the boroughs there never seems to have been anything like a uniform plan. The franchise appears to have been distributed to each place on the plan of the survival of the fittest. In some places the corporation; in others the holders of property within the borough by burgage tenure; in another the general body of the townspeople formed the electorate. The smaller these bodies were the better was

the chance of outside influence prevailing, and in many places the right to nominate members fell practically into the hands of the nobility, the gentry, or the crown, while under the Tudors the sovereign steadily pursued the plan of creating rotten boroughs in order that they might be under its influence. A natural reaction against this, caused the members to become exceedingly jealous of the creation of new boroughs, and the practice gradually ceased ; so that while Elizabeth created thirty boroughs, James I. only created thirteen including Oxford and Cambridge Universities, Charles I. nine, and Charles II. only brought in Durham a county palatine, with its capital, and created one new borough, Newark. In the reign of James I. a revision was made of the boroughs and, with the exceptions above, the places to be represented were regarded from that time as fixed.

Now this notion of the representation being fixed, soon produced bad results. So long as the kings had the power of increasing the number of boroughs, a way of making the franchise keep pace with the changes in wealth and population was at any rate provided. But now the system began to get wrong at both ends. Boroughs which had representatives, became decayed and ought no longer to have sent members ; whereas towns grew up which were thriving and prosperous and ought to have had members, but were kept unrepresented. The evil rapidly got worse, for whereas when parliamentary institutions had been growing, the south and east of the country were far in advance of the rest in wealth and population, a movement was beginning which, owing to the rise of manufactures, has steadily been transferring the wealth and industry of the country to the north and west, and has not yet ceased to operate ; and so rapid was its action that in a very short time, Birmingham, Manchester,

and Leeds, which after London, Bristol, and Norwich, stood as the most important centres of trade and industry, were unrepresented in Parliament. But the jealousy of the nobility and gentry who had the chief influence in Parliament, and who feared to have the members in the small boroughs exchanged for members for large towns, in which they had no influence, joined with the apathy of the towns themselves allowed the system to become firmly settled. The first who dealt with the question was Oliver Cromwell, and in two of his Parliaments, not only did he give members to the counties in proportion to their population, so that Yorkshire had twelve and Essex thirteen members, but he also gave members to Leeds, Birmingham, Manchester, and other rising towns, and disfranchised a number of rotten boroughs. But the change was not popular, either with Parliament or the country ; the Convention Parliament was elected on the old principle, and so were the succeeding Parliaments. Nor was the plan so bad as it might have seemed. The members of the Commons, though elected in all possible ways, and representing all manner of places, did as a whole represent the English feeling of the day, and though perhaps a more popularly elected body might have had something to say to the plan of exchanging the feudal dues paid by the gentry, for an excise on the beer drunk by the people, still, on the whole, Parliament did very well, so long as it felt that it was fighting the battle of the nation against the king.

But no sooner was the victory won, and Parliament found itself master of the situation, than it began to think of itself first and the nation second ; and, as we have seen, the privileges and powers which had served as a defence against the king, were now turned by Parliament into a weapon against the nation. Still it must be again said the Commons of the early eighteenth century, corrupt as they were,



deserved well of their country. Like Henry VIII. and the Tudors, they brought the nation through a most difficult time; showed themselves in many respects wiser and more tolerant than the bulk of the nation; and it was certainly not till after the fall of the Jacobites that any very serious fault can be found with the working of the system, so long as one makes no demand for symmetry and order, but only argues from results.

But with the accession of George III. came a change which in some respects corresponds to the revival of parliamentary activity on the fall of the Spanish Armada; the difficulties which Pitt had had to deal with in his rise to the front, the notorious influence of the Whig lords, the prevalence of bribery, and the unsatisfactory working of the government under George III., led many to think that some change was necessary. Of these, one section, as we saw, headed by Burke, contended for the abolition of the king's influence; the other, headed by Lord Chatham, looked forward to parliamentary reform.

The first proposal of Reform was made, however, in the reign of George II. In 1745, during the actual progress of the rebellion, Sir Francis Dashwood moved as an amendment to the address, "That, for the firmer establishment of his Majesty's throne, on the solid basis of his people's affections, it should be our speedy care to frame such bills as may effectually secure to his Majesty's subjects the perpetual enjoyment of their undoubted right to be freely and fairly represented in Parliament, frequently chosen, and exempted from undue influence of every kind." This proposition, which was true enough in the abstract, appears at this moment to have been shelved, on the easy plea that it was inopportune to raise the question at this crisis, and Pitt himself took a leading part in resisting the motion. The

question accordingly dropped, and it was not till 1770 that Chatham, himself, in the course of a debate on another matter, made a casual allusion to the expediency of giving an additional member to every county. This was the first proposition to do anything ; but Chatham was known to entertain very strong views on the subject, and in 1766 he had denounced the system of borough representation as the "rotten part of the constitution." "If it does not drop," said he, "it must be amputated." In 1770, however, Chatham had made up his mind that it was impossible to get rid of the boroughs, rotten as they were, and his idea was to "infuse such a portion of new health into the constitution as may enable it to support the most inveterate diseases." Chatham's suggestion came to nothing ; but the subject was now fairly raised, and though it hardly came "within the range of practical politics," a series of motions were brought forward, and public opinion began to be aroused. Various events brought the matter forward. The contest between the English Parliament and the colonies, suggested the reflection that a large portion of the English nation were no more represented in Parliament than the colonies themselves ; the struggle with Wilkes exhibited the Commons trying to trample upon the rights of constituencies ; the determination of the Commons to prevent their debates from being reported, suggested that there was something the members wished to conceal ; and the rise to importance of newspapers both in London and the provinces, helped to direct upon the proceedings of Parliament an amount of public attention and curiosity, to which the members had hitherto been wholly unaccustomed.

Several motions were introduced. In 1776 John Wilkes brought forward a motion for parliamentary reform which was lost in the Commons without a division ; in 1780,

at the very moment when the mob collected by Lord George Gordon was besieging the House of Commons, the Duke of Richmond was descanting to the Lords on the advantages of manhood suffrage and annual Parliaments, but his motion met the same fate as that of Wilkes. The attention of Parliament was directed to the question of royal influence, which affected itself, and till that was cleared away, there was no chance for a reform which merely affected the nation. Indeed, the advocates for economical reform were by no means in favour of the reform of Parliament. Their leader, Burke, was most deeply imbued with the notion of the extraordinary beauty and sacredness of the British constitution as he found it, and no idea of tampering with the existing House of Commons, ever formed part of his political programme. But when the Rockingham ministry had dealt their great blow at influence, Reform came to the front, and in the hands of young William Pitt, the leader in the Commons of Lord Shelburne's section, who were supposed to follow the principles of the great Chatham, it seemed to have every chance of becoming the question of the day.

In 1782, directly the great scheme of economical reform had been carried, and the proceedings against Wilkes had been expunged, young Pitt brought forward his motion to inquire into the state of parliamentary representation, and it was only thrown out by 161 to 141, the closest division on reform till 1831. Again, in 1783, when the Coalition were in power, Pitt brought forward his resolution, but it was now thrown out by 293 to 149. This year Pitt came into power himself, and it might have seemed likely that he would be able to carry his plan into practical execution. But this was not the case. Pitt in office was in some respects a different man to Pitt out; and the increase in the

support given to the bill was not commensurate with what it would have been had the crown influence which still remained, been thrown into the scale. Pitt's scheme, however, was well considered, and certainly did not neglect existing interests. The money value of rotten boroughs was very considerable, and was reckoned in thousands of pounds, and the rush of rich East Indian merchants into the market had still further raised the price, so that in 1775 the representation of Gatton had been sold for £75,000. Of this Pitt took account, and in proposing to disfranchise thirty-six rotten boroughs, he also proposed to compensate their owners. The seventy-two seats which he would thus gain, he intended to give to the counties and to London. The bill, however, was thrown out by 248 to 174, and Pitt retired from the contest.

From this time reform languished. There were many reasons for this. Pitt's government was thoroughly popular, and his administration excellent; and as the desire to get rid of an unpopular ministry and of a bad system of government was removed, the pressure from the people outside ceased to operate, and it was too much to expect that Parliament, out of a pure desire for a symmetrical system of government, would have been willing to interfere so largely with its own comfort, or even that Pitt should have been desirous of uprooting a system which had such an obvious advantage in securing him a steady majority. If Pitt did not stir, there was no one else to move in the matter, so the years between 1785 and 1792 were allowed to slip by without anything serious being done. Then came the French revolution, an event which while it encouraged the sanguine advocates of reform, utterly horrified the nation as a whole, threw into the opposite scale all who were timid, or who had any interest which seemed

to be threatened, and supplied ready the answer to all suggestions of improvement, "Look at France, she tried to reform, and see the result." It was useless to point out that the problem in each country was different. Burke, who was never a reformer of Parliament, was now leading a crusade against all reformation, and even if the leader escaped being carried away by his own enthusiasm, his followers comprehended every species of reform, however innocent, in one wild howl of denunciation. What might have been the result had the Commons quietly taken in hand the work of rooting out abuses bit by bit, gradually eliminating those boroughs which were notoriously rotten and transferring their seats to unrepresented towns, it is impossible to say; the experiment never was fairly tried, and it is one of the prices we pay for the French revolution that such was the case.

It was by no means that reform ceased to be necessary. Ample evidence showed its need. In 1792 a society called the Friends of the People, was formed for the purpose of collecting statistics on the subject, and in May, 1793, Mr. Grey, who had already made one unsuccessful motion on the subject, presented to the Commons a petition of the society, in which they demonstrated that the representation was in great need of reform. They showed (1) that the majority of the House was elected by 15,000 electors, only  $\frac{1}{200}$  part of the adult males of the kingdom; (2) that Cornwall returned more members, county and borough, than Yorkshire, Middlesex and Rutland together; (3) that Cornwall sent more borough members than Yorkshire, Lancashire, Warwickshire, Middlesex, Worcestershire and Somersetshire united; (4) that eighty-four individuals did of their own authority send 157 members to Parliament, that seventy other individuals practically nominated 150 more, so that 154 persons returned

311 members, a majority of the whole House, which then numbered 558. Besides these points the petition complained of the irregularities of the franchise. The whole document, which is very instructive, can be found at the close of Molesworth's "*History of the Reform Bill of 1832.*" On this petition, Mr. Grey founded a motion, which, being opposed by both Burke and Pitt, was thrown out by 232 to 41; and another effort, in 1797, was rejected by 256 to 91. For fifteen years the question was allowed to drop. It was again revived in 1809 by the Radical member Sir Francis Burdett, but he only found fifteen supporters. In 1810 Mr. Brand succeeded in getting 115 followers, which shows that the terrors of the French revolution were a little subsiding; but in 1812 his motion was rejected by 215 to 88, and it was not till the wars with Napoleon were closed by the victory of Waterloo, and the nation which had so long had its attention engrossed with foreign politics, was able to give some heed to its own affairs, that the question became again prominent.

That the evil was less, certainly formed no part of the reason why the question was in abeyance. Though bribery in the House of Commons itself had ceased with the American war, boroughs were bought and sold with unblushing effrontery. Lord Palmerston tells us that he and a friend were lucky in getting seats for £1500 each for a short time, when the cost of a session was £5000; and he explains that in the general election of 1806, Lord Grenville and his colleagues did a good stroke of business by buying up seats in advance, for a small sum and some piece of patronage, and then when the election came on and prices went up, reselling the seat at some £5000, and applying their gains to securing other constituencies, so that they managed to gain a large amount of support without spending the

public money. Seats were regularly bought and sold ; and an auctioneer selling a property to which a seat was attached, neatly described this additional source of profit as an "elegant contingency." Meantime the elections at the rotten boroughs often afforded amusing scenes.

Gatton was a model borough. It possessed two members and three electors. The latter were Sir Mark Wood, his son, and his butler, Jennings. In the election of 1812, Gatton was represented by Sir Mark himself and Mr. Congreve, the inventor of the Congreve Rocket. In 1816 Congreve resigned, and it seemed good to Sir Mark to nominate for the vacancy his son Mark, who happened to be away, and it was expected that Jennings would second him as a matter of course. But the butler flatly refused, and proposed himself. Here was a dilemma ! To get over the difficulty, Sir Mark was forced to second the butler, who was prevailed on to second the son, while Sir Mark alone voted, and so the Marks, father and son, went up to Parliament as the representatives of themselves and their butler.

But this seemed no laughing matter to our grandfathers. After Waterloo came one of the most terrible times in our history. Country gentlemen, manufacturers, merchants, farmers, artisans, and labourers alike felt the pinch of want ; from all over the country the dire story of distress and crime reached the ears of Parliament, and though the government in power felt that the crisis would be adequately met by the famous six Acts, the country determined to go to the root of the matter, and as a first step on the road, to insist on the reform of Parliament.

Two parties supported the demand. The old Whigs with Lord Grey, the Mr. Grey of 1792, at their head, were desirous of carrying out a careful, well considered plan, which should lop off the rotten boroughs, and transfer their

votes to large towns and counties, making as little alteration as might be, in what seemed to be the advantages of the existing system ; while the Radicals, led by Burdett, Cobbett, and Hunt, were in favour of a tremendous scheme for universal suffrage, electoral districts, the ballot, and annual Parliaments.

Burdett led the attack on the position, but met with little success, for in Parliament itself the Radicals were a ridiculous minority ; and it was not till in 1819, when Lord John Russell, a member of a noble house which for centuries had been on the side of the people, came forward as the representative of the Whig scheme, that the siege began in regular form. After the rejection of several abstract proposals in favour of reform, Lord John proposed in 1820, that in accordance with the ancient practice of relieving decayed places from sending members, and transferring them to populous places, boroughs which were notoriously corrupt should cease to send members, who should be transferred to large towns, and he moved that henceforth Grampound, a most corrupt place, should cease to send members. The motion fell through, owing to the king's death ; but next year it was renewed, with the rider that the members taken from Grampound should be given to Leeds. This passed the Commons, and was then sent up to the Lords.

With the Lords, then, rested the question whether the seats should gradually be transferred to large towns as occasion required, or whether they should declare their opinion that the large seats of industry were unfit to send representatives. To the Lords, however, the question hardly appeared in that light. At that moment 124 seats in the House of Commons were practically in the gift of members of the House of Lords, and the question seemed to be, shall we give the seats from Grampound to a town where



we have no influence, or to a county, and so establish a precedent for transferring seats to districts where some of our members are sure to have a preponderating, or at any rate a considerable influence? The Lords decided for the latter, and henceforth the members of the Upper House were regarded as the declared antagonists of the large towns. But it is easy to understand their fears. The country was seething with suppressed indignation; Thistlewood and his gang had just been detected; ministers were terribly unpopular; the French revolution seemed on the verge of repetition; to yield a step seemed but to open the floodgates of revolution, and the peers were determined that they, at any rate, would not be responsible for the ruin of their country.

The Lords gave the two seats, not to Leeds, but to the county of York.

Again, in 1828, the Sibylline books were again offered, but the Lords decided as before, and rejected a bill for giving the representatives of Penryn to Manchester; while the supporters of the Duke of Wellington's ministry, in spite of the resignation of Mr. Huskisson, Lord Palmerston, and the Canningites, defeated a bill for giving the members of East Retford to Birmingham. In this way the Tories had declared in turn against giving the franchise to Manchester, Birmingham, and Leeds, the three largest unrepresented boroughs in the kingdom.

Meanwhile the question of Catholic emancipation, the rival of reform, was being settled; and while this was being done the Whigs, finding their efforts useless, were gradually drifting into an alliance with the Radicals, and preparing themselves to support a measure which, in its comprehensiveness, its destructiveness, and its attempt at symmetrical reconstruction, was foreign to anything they would have

advocated themselves. Still they might have hesitated a long time, before aristocrats like Lord Grey and Lord John Russell would have marched shoulder to shoulder with Cobbett and orator Hunt, when a declaration of the Duke of Wellington precipitated the crisis.

In his place in the House of Lords, speaking with all the authority of Prime Minister of England, the duke gave it as his solemn opinion, "That the country possesses a legislature which answers all the good purposes of legislation, and this to a greater degree than any legislature ever has in any country whatever;" and he added, "that he was not prepared to bring forward any measure of reform, but that he would always feel it his duty to resist such a measure when proposed by others."

Such a statement as this, made at a moment when men's hopes were elated by the accession of the popular William IV., had the effect of uniting all sections of reformers, and precipitated the pitched battle between the reformers and the country on one side, and the Tories and the House of Lords on the other.

It is needless to enter into the details of the struggle which Mr. Molesworth has so graphically told. How, in spite of government influence and corrupt patronage, the reformers, carried on by part of the wave of revolutionary feeling which was hurling Charles X. from the throne of France, suddenly found themselves, after the election of 1830, a majority of the House of Commons; how the king called Lord Grey and made him the chief of a reform ministry; how the bill passed the second reading by a majority of one, and was practically lost in committee; how Parliament was dissolved by the king in person, and again the reformers carried the day; how the bill was carried in the Commons by 109; and how it was rejected by the

Lords by 41. How a third reform bill passed the Commons, and again was wrecked in the Lords; how the ministry resigned and the Duke of Wellington failed to form a ministry; and how, finally, a fourth reform bill was sent up, and the Lords, finding themselves certain to be defeated by a fresh creation of Peers, retired from the contest and allowed the bill to pass. All this is matter of narrative, and we have here to deal with results.

Very different, indeed, was the action of the Reform Bill of 1832, to the gradual process for the extinction of corruption and influence which had been advocated by the Whigs. Instead of a House in which, although the landed gentry and the peers had undue preponderance, all classes were more or less represented, the House of Commons emerged as a body in which, while great influence was still left to the peers and the landowners, some influences were altogether excluded, while an altogether new predominance was given to the middle classes. For, if under the old plan many members were nominated by individuals, there was Preston, where universal suffrage prevailed; and, if many boroughs were corrupt or venal, in others the patron exercised his right with discrimination and foresight. All this was swept away. Fifty-five rotten boroughs were totally disfranchised, thirty-two were deprived of a member each, and these seats were divided among the counties and populous towns. Twenty-two boroughs and cities were to return two members each, nineteen were to have one each; and by dividing some counties, and giving three members to others, and allotting one member to the Isle of Wight, the rest, amounting to one hundred and forty-three seats, were disposed of.

In the matter of the franchise, in the counties, copyholders and leaseholders for years, and tenants-at-will paying £50

a year were added to the forty shilling freeholders. These changes, except in their extent, were such as any reform must have aimed at ; but the arrangements for voting in the boroughs introduced a new principle.

With the exception of rights reserved to the freemen, the franchise in towns was reduced, whatever it had been before, to the dead level of the £10 householder, and as the lowest class is always the most numerous, the determining force in each constituency passed into the hands of the lower middle classes.

For this plan there is much to be said on both sides, but the principle of symmetry once introduced, it was impossible to draw the line, and after a period of rest, a new agitation was made for the further extension of the electorate to the working classes. This was finally done in 1867, when household suffrage was established, and a fresh distribution of seats was carried out on similar principles to those of 1832. Nor is the tendency yet played out, and the latest development of the idea of symmetry, is the movement in favour of household suffrage in the counties.

At this point, the story of the legislative measures by which the relation of the Parliament to the people have been determined, has been brought to its close, and it only remains to examine the result and to see what in actual working, are the powers of the sovereign, the cabinet, and the Parliament, and the several relations which bind them together as the government of the country.

## CHAPTER XX.

### CONCLUSION.

To give in one short chapter an exhaustive account of the working of the English constitution is out of the question. Space would not permit, nor has the author any pretence to that knowledge of modern politics, which would be absolutely indispensable for the purpose. But as some sort of summary is needful, an attempt will be made to give in broad outline a sketch of the results which have been attained by the gradual process of evolution, which has been related in the preceding chapters.

In one sentence, the process we have seen at work has been this. While the prerogatives of the sovereign have remained in theory almost unchanged, his active functions have been gradually divided among a number of ministers, who now by the principle of ministerial responsibility, exercise their powers in accordance with the wishes of the majority of the nation.

The result of this change has been to give us, by a process of gradual growth, without revolution and with no severance of continuity, a constitution which unites monarchical steadiness with republican freedom, and which combines such a number of practical advantages, as no other nation, by the

most ingenious system of constitution making, has been able to secure. Its strength lies in its very anomaly. Montesquieu declared that it was essential to the well-being of every state that the legislative, executive, and judicial functions should be absolutely separate. In England they are, to all appearances, hopelessly entangled. By one enactment, Parliament has forbidden the sovereign to keep a standing army in time of peace; by another it annually allows such an army, and votes money for its support. In law, the sovereign may declare war, make treaties, appoint and dismiss his own officers; in fact, he may do nothing without the advice of his ministers, who are responsible to Parliament, even if they carry out his most absolute commands. And yet, while the sovereign, in the exercise of prerogative, is thus confined, the monarchy is an essential part of the system, and performs well, functions which no other nation has contrived to get done in so satisfactory a manner.

And how is this? Because without altering the theoretical position of the sovereign, we have allowed the functions of royalty to divide into two sections, one performed by the monarch himself, the other by his ministers, so that we retain all the advantages of the one, while we avoid the dangers of the other. It would be too much to call these functions active and passive, because it is impossible to draw the line between the two; but in the main, the functions which have been left to the sovereign are those which appertain to mere existence; those which are performed by deputy are those which are vigorous and active.

By simply existing, the sovereign performs many of the functions which were attached of old to the English kings. A monarch like ours, descended from a glorious line of ancestors, stretching back without break to the founders of the West Saxon line, appeals to the loyalty and historic in-

instincts of an ancient people. His throne is the symbol of the unity of the race ; he is the living embodiment of the nation, round whom its history gathers, and on whom, as a personal object, the feeling of patriotism, so vague in a large state, can concentrate itself in the form of loyalty. The height which the sovereign occupies is extreme ; but the descent is broken by the existence round the throne of the nobility. The nobles depend for honour either on ancient lineage or recent merit ; on the one hand they approach the crown, on the other they touch society ; and as the nobility in England have never been a distinct caste, they serve as a link in the chain which binds the palace to the cottage. With the sovereign, they share many of the functions which belong to the existence of a monarchy, and of a nobility which depends neither on political power nor on commercial success ; and in a country like ours, where both political and commercial ambition run very high, it is a great advantage that these should be balanced by the existence of honours which neither votes nor money can purchase. Again, so long as they command respect, the nobility help to teach respect for the crown, and happily our nobility have, as an order, been free from the vices, which abroad have often secured so evil a name for the aristocracy.

But leaving aside these points, are there any more practical reasons to follow ? In the first place, the theory that government rests in the crown, enables us with ease to pass from one minister to another. It disguises the fact that at a general election we are really choosing our rulers, and its continuity saves us from the trouble of having a series of presidential elections. It is quite enough to have every now and then a general election ; we have no wish for a presidential election as well.

Again, the sovereign may exercise very important functions

at the birth or death of a ministry. He may have to choose between two very equally balanced claims of statesmen on the same side of the House ; or may exercise considerable influence in the filling up the minor places in the ministry, a power which, however, has a tendency to decrease. At the close of a ministry it is conceivable that, in the case where the majority of the House of Commons held the same views as the House of Lords, so that there was no way of making the ministers resign, though they had ceased to have the confidence of the nation, a very far-seeing and exceptionally gifted sovereign might earn the gratitude of his country by forcing a dissolution ; but it is a contingency not very likely to occur.

At ordinary times, our sovereigns have adopted the principle that the king reigns but does not govern ; but the present sovereign has laid down very clearly that, if that is the case, she has no intention of giving up her due knowledge of what is going on. These views were expressed in her memorandum to Lord Palmerston which ran as follows :—

“The queen requires, first, that Lord Palmerston will distinctly state what he proposes in a given case, in order that the queen may know as distinctly to what she is giving her royal sanction. Secondly, having once given her sanction to a measure, that it be not arbitrarily altered or modified by the minister. Such an act she must consider as failing in sincerity to the crown, and justly to be visited by her constitutional right of dismissing that minister. She expects to be kept informed of what passes between him and the foreign ministers, before important decisions are taken, based upon that intercourse ; to receive the foreign despatches in good time ; and to have the draft for her approval sent to her in sufficient time to make herself acquainted with their contents before they must be sent off.”



Having briefly recapitulated the very important functions which still remain to the sovereign, we must now pass to the ministry, the body to whom the more active functions have been delegated. The ministry form a large part of the executive. They consist of two bodies, a large one, comprising those officers who hold political office under the crown, and who according to custom all belong to that party which has the majority in the House of Commons, and an inner council or cabinet which is made up of the chief officers, and who discuss in secret the most important matters of State. The cabinet and the ministry are terms unknown to the law. Of the ministers, some are, and some are not, members of the Privy Council, but the cabinet are, as we have seen, all members of that body, and have developed out of a small irregular committee, meeting for the transaction of the highest State business. The offices held by the members of the cabinet are not fixed. They vary in number from time to time. Though its members are an important part of the executive, they are all of them members of the legislative body. The whole system is the result of no law, and it is fettered in its operation by no enactments.

It is just this point which has been the greatest puzzle to philosophers. When the American statesmen in the eighteenth century were framing a constitution for the United States, they took care that the legislative, executive and judicial functions should be kept completely separate. So they set up a president, elected by one set of electors for four years, and surrounded by a staff of ministers named by himself; a congress of two houses, one, the senate, consisting of two members for each State, another, the house of representatives, of members for each State, in proportion to its numbers, elected practically by universal suffrage; but they forbade any minister to be a member of the congress, and

would not allow the president to dissolve congress, nor congress to depose the president, except by the tremendous process of State impeachment. And what was the reason of this? They took as their model the English constitution as they saw it, and tried to keep its merits, while they avoided its failings. But at the time they took their observation, George III. was not only reigning but governing, and his minister, Lord North, was little better than a head clerk, and falling into the same error as the English statesmen of 1701, they imagined that it was essential to prevent the king's ministers from having seats in Parliament. Before the plan was tried in practice, the English saw their folly and repealed that section of the Act of Settlement ; \* but the Americans embodied it in their plan, and hence we have the present arrangement.

Now, without going into detail, the great merit of the English plan is, that if the English ministers cannot get the measures passed by the House of Commons, they can advise the king to dissolve the House and see whether the nation will give them more support ; or if the House is dissatisfied with the ministry, it can refuse to order supplies, or pass the Mutiny Bill, in which case, as supplies are only voted for one year and the Mutiny Bill is only in force for the same length of time,† the ministry is in its turn forced to dissolve, and hence the ministry, the Commons, and the nation can never be out of accord for any very long time together. Again, when an English minister wants a tax granted or a bill passed, he can go down to the House and explain it, and use his personal influence to get it through. Moreover, no bill has a chance which is not supported by ministers or, at any rate, not opposed by them, and therefore they never

See p. 207.

† See p. 197.

wish to advise the sovereign to exercise his prerogative of refusing his consent. Now the American constitution fails in all these points. The president, if he disagrees with his House of Congress, cannot dissolve them; on the other hand, they cannot make him dissolve. He cannot go down to the House; he can only write a letter; and the ill working of the system is shown by the fact that the right of veto has again and again to be used, because the executive is continually out of accord with the legislative department. Again, there are other points of difference. In England immense interest is taken in politics, indeed, a too keen excitement is felt; while in America, except at election times, the masses take little interest in politics, and why? Because in England our system of practically putting the executive into the hands of that party which has the majority, has created a constitutional opposition ever ready to show the nation that it is more fit than the men in power to manage the nation's affairs. A regular battle is always going on. At any moment a grand catastrophe may occur, and the ministry and the opposition may have to change sides, or an appeal be made to the country. It has all the excitement of a fight. Now, in America there is nothing of this. No debate can turn out a ministry or produce a general election, and the consequence is that little interest is taken.

But are there no disadvantages? Certainly. Party warfare in England runs very high; very hard words are used. But hard words do not hurt much; the question is whether the interests of the nation suffer by the constant possibility of change. This depends immensely on the constitution of parties. Were either unscrupulous, or unpatriotic, the most terrible results might happen, but so long as each honestly aims at securing the good of the country, and does not ostentatiously attempt to reverse the policy of its predecessor,

the advantage of never having the ministry for long out of accord with the nation, far outweighs all minor disadvantages.

But does our system secure us the great aim of all government, the getting as our rulers the best men? It can at any rate claim that it does as well as any other plan yet devised. The qualities needful to enable any man to hold his own as a minister in England seem to be these. He must be capable of an immense amount of hard work, or he would never for a moment be able to stand the strain of work both in his office and in the House of Parliament, particularly in the Commons. He must have been so many years in the House that he has convinced it that he is a capable man. He must almost necessarily be a good speaker, to explain or defend his policy. He must have the respect of the House and of the nation. But it does not necessarily follow that even men such as these are invariably able to manage such varied departments as war, the Home office, the navy. We have, however, provided against this difficulty, by arranging that the detailed work of each department shall be done by permanent officials, who do not change with the ministry and have no politics, so that the heads of departments are merely thoroughly able men, who come into each department with a desire to make it work well, and who by their general knowledge of affairs are often able to give a fillip to business, to excite energy, and war against the great danger of permanent officials,—red tapeism. If this is not, in theory, claiming a great deal, in practice the system is found to supply us with at least as able men as the President of the United States can command, and we have yet to learn that our departments are worse managed than those of the States.

So much for our method of choosing our executive and its working; we now turn to judicature. Of this, happily,

hardly anything need be said. The judges, once the mere officers of the king, are now appointed practically by the prime minister ; but no one has ever yet asserted, that party motives have ever raised to the bench a political partisan who was unworthy to wear the ermine.

Lastly, the legislative. The fluctuations which have been traced in the career of the national assembly, have been many and various ; but all along it has maintained one great characteristic. It has thoroughly represented the feelings and views of that portion of the nation which has for the time possessed the chief political power. Whether one estimates political weight in terms of the strongest battalions, or the largest number of votes, the result has been the same. Throughout the Middle Ages the House of Lords was the predominant House, because the strength of the nation lay in the lords and their retainers. Slowly the power, following the change outside, passed to the House of Commons, but even then only to the House of Commons as dominated by the same class to which belonged the House of Lords. Then the great Reform Bill of 1832 upset this arrangement, and gave power into the hands of the now all-powerful middle class ; and finally, in 1867, Lord Beaconsfield decided to shift the centre of gravity still lower, and place the arbitrament of the destinies of the nation in the hands of the working classes.

Each of these changes has produced a corresponding change in the members of the ministry and the Commons. So long as the peers held sway, the sovereigns had difficulty in keeping as their counsellors any men who were not of noble birth, and when, after the revolution, power passed from the hands of the king to the Houses of Parliament, dukes and earls still formed the predominant element in every ministry. It was only by degrees that commoners

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such as the Pitts, gained a footing. With 1832 came a change. Since that date the ministries have been less aristocratic, as they have come to reflect the character of a new House of Commons, and there is some evidence to show, that since 1867 a further change is in progress.

But of this it is too soon to offer any forecast. As a rule, since the English Parliament came to have the chief power, and the principle of ministerial responsibility has been enforced, England has had as her boast, that her politicians have been singularly free from low-mindedness or self-seeking; that her politics have been moulded by the wishes of her people and not by the mean aspirations of wire-pullers; and so long as she can maintain this boast, there is little fear but that her institutions, gradually continuing their process of development, may still meet the wants of her great empire; but once let the nation surrender itself into the arms of men who look to self first, party next, and the nation afterwards, if any such exist, and we may be sure that it will have entered upon a road which can only lead to ruin.

## INDEX.

- ADMIRALTY**, 52  
 Alcred, 8  
 Alfred, 11, 13, 16  
 Annates, 49  
 Anne, 205, 212  
 Anselm, 31, 33, 41  
 Appropriation of supplies, 175,  
     196  
 Assize of Arms, 53  
 Assize of Clarendon, 50  
 Assize, grand, 51  
 Aylesbury Petition, 215  
  
**BACON**, Sir Francis, 97, 123, 130,  
     133, 135  
 Bastwick, 156  
 Bates' Case, 129  
 Becket, Thomas à, 46, 48, 49  
 Bigod, Earl, 71  
 Birmingham, 165, 246  
 Black Death, 81  
 Black Prince, 79, 82, 83  
 Blanche of Lancaster, 82  
 Bohun, Earl, 71, 82  
 Boniface VIII., 69  
 Bourchier, 78  
 Brand, 243  
 Bretwalda, 10  
 Bribery, 203, 204  
 Bristol, Earl of, 140, 141  
 Brougham, Lord, 229  
 Burdett, Sir Francis, 215, 247  
 Burke, 216, 225, 226, 240, 243  
 Bute, Lord, 218, 221  
  
**CABAL**, 176-181  
  
 Cabinet, 177, 210  
 Canute, 13, 16, 17, 21, 37  
 Capet, Hugh, 19  
 Carr, 131, 134  
 Cecil (Salisbury), 128, 131  
 Ceorl, 7  
 Cerdic, 4  
 Chamberlain, 36  
 Chancellor, 36, 38, 97  
 Chancery, 52  
 Charles I., 138-163, 171, 203  
     — II., 168-189, 197, 199  
     — VII., 94  
 Charter of Henry I., 32  
 Charter, Great, 60-63  
 Charters, Confirmation of, 72  
 Charters of towns, 57, 188  
 Chatham, 216, 219, 239  
 Church, 6, 20, 27, 33, 46-49, 60,  
     69, 86, 105, 107, 157, 173, 187  
 Clarence, Lionel, 70, 82, 83  
 Clarendon, Constitutions of, 48,  
     49  
     —, Earl of, 175, 176  
 Cobbett, 245  
 Coke, Sir Edward, 101, 130,  
     133, 136  
 Colchester, 234  
 Comitatus (Comes), 3  
 Common Pleas, Court of, 52  
 Convocation, 69, 163  
 Constable, 30  
 Corporation Act, 173  
 Corporations, Remodelling of,  
     188, 190  
 Counties, Elections in, 233

Counties Palatine, 23  
 Cromwell, Oliver, 133, 143, 163-167  
 —, Richard, 167  
 —, Thomas, 105  
 Crouchback, Edmund, 74, 86  
 Cupbearer, 36  
 Curia Regis, 39  
 Cynric, 5

DANBY, Earl, 181, 204, 211  
 Danegeld, 61  
 Dashwood, Sir Francis, 238  
 Declaration of Indulgence, 181  
 Derby. *See* Henry IV.  
 Despensers, 75  
 De tallagio non concedendo, 72  
 Dispensing power, 181  
 Dissolution of Parliament, Right of, 253, 255  
 Distrain of knighthood, 153  
 Divine right, 121  
 Domesday-book, 28  
 Dunning, 226, 229  
 Dunstan, 12, 18  
 Dux (Herzog), 2, 9

Ealdorman, 2, 7  
 Earldoms, 12  
 Edgar, 12, 13, 14, 17, 18  
 Edgar Atheling, 20, 21, 32  
 Edmund, 17  
 Edward the Elder, 12, 18  
 — I., 44, 53, 67-73, 88  
 — II., 71-75  
 — III., 75-83, 86, 89  
 — IV., 90-102  
 — VI., 95, 101, 107, 112, 113, 102, 202  
 — the Confessor, 13, 18, 20, 21, 28, 33, 35, 38  
 Edwin, 10  
 Edwin, Earl, 21, 22  
 Egbert, 11, 13  
 Eilric, 154  
 Eliot, 133, 143-147  
 Elizabeth, 112-122, 129, 133, 139, 151, 154  
 Ethelbert of Kent, 8  
 Ethelbert, 127

Ethelred II., 12, 18  
 Exchequer, Court of, 39

FERDINAND of Castille, 92, 94, 95  
 Feudalism, Continental, 15; modified by William the Conqueror, 23, 26; fall of, 93  
 Feudal dues, 32; commuted, 171  
 Fitz Osbern, 37  
 Fitz Peter, 57  
 Flambard Ranulf, 32, 33, 37, 38  
 Forests, 153  
 Fox, 227  
 Friends of the People, 242  
 Fyrd, 52

GATTON, 241, 244, 246, 253  
 Gaveston, 74  
 Gaunt, John of, 79, 82, 83  
 George I., 209, 212, 215  
 — II., 209, 212  
 — III., 217-229  
 — IV., 229  
 Gesith, 3  
 Gloucester, Thomas of, 82, 84  
 —, Humphrey of, 74, 88  
 —, Richard of, 99, 101  
 Godolphin, 201  
 Godwin, 13, 18, 37  
 Goodwin's Case, 126  
 Grafton, Duke of, 221  
 Grampound, 245  
 Gregory VII., 22  
 Grenville, Lord George, 222  
 —, Lord, 243  
 Grey, Lord, 242, 243, 244, 247  
 Guader, Ralph, 28

HABEAS Corpus, 142, 184  
 Hampden, John, 133, 143, 155  
 —, Edmund, 133  
 Harley, 209, 212  
 Harold, 20, 21  
 Harthacnut, 13  
 Henrietta Maria, 139, 151, 152  
 Henry I., 30-42, 46, 49, 50, 54, 59, 60, 61, 88  
 — II., 25, 44-57, 68, 70, 80, 88  
 — III., 49, 63, 64, 214  
 — IV., 84-87, 89



Henry V., 87  
 — VI., 87, 89, 95  
 — VII., 91, 94-102, 104, 105, 106, 108, 111  
 — VIII., 95, 96, 98, 101-113, 122  
 —, Bishop of Winchester, 44  
 High Commission Court, 112; abolished, 161  
 High Court of Justice, 39  
 High Steward, 36  
 Hobbes, 122  
 Hunt, 245, 247

IMPEACHMENT, 79; revived, 135  
 Influence of Crown, 214, 230; diminished, 226, 229  
 Instrument of Government, 164  
 Investitures, 33

JAMES I., 116, 118-137, 151  
 — II., 184-191, 195  
 John, 49, 55-60, 63, 65, 80, 88  
 Joinville, 25  
 Judges, 97, 142, 158, 161  
 Junius, 225  
 Jury, 50, 51  
 Justices-in-Eyre, 50  
 Justiciar, 36, 37

KING, introduction of, 5; early powers of, 7, 8, 9; after Conquest, 35; new monarchy, 97; present time, 250-253  
 King's Bench, 51  
 Knights of shire, 66, 76, 233

LANCASTER, Thomas of, 74, 75  
 Lanfranc, 30  
 Langton, Stephen, 59, 63, 65  
 Latimer, Lord, 79  
 Laud, 139, 151, 152  
 Leeds, 165, 245  
 Leighton, 156  
 Leofric, 18  
 Locke, 122  
 Lollardism, 86  
 London, 231  
 Longchamp, 57  
 Lords-Lieutenant, 97

Lords, House of, 76, 163, 212  
 Louis, St., 25, 65  
 Louis XI., 92, 94, 95, 108

MALCOLM, 17  
 Manchester, 165, 246  
 Marlborough, Duke of, 201, 209  
 Marshall (Earl of Pembroke), 63  
 Marshall, The, 36  
 Mary, 95, 129, 164, 165  
 Mary Queen of Scots, 116, 117, 118  
 Matilda (Empress), 42, 46  
 Maud, 32, 33  
 Melbourne, Lord, 230  
 Mercia, 11  
 Middlesex, Lord, 137  
 Militia, 52  
 Militia Bill, 162  
 Milton, 133  
 Mompesson, Sir Giles, 135  
 Monasteries, 108  
 Monopolies, 119, 137  
 Montague, Dr., 140  
 Montesquieu, 251  
 Montfort, Simon de, 64-68  
 More, Sir Thomas, 105  
 Mortimer, Roger, 75  
 Mortmain, 69  
 Morton, Cardinal, 98-132  
 Mutiny Act, 197, 255

NEVILLE, Lord, 79  
 Newcastle, Duke of, 219, 220, 221  
 Normandy, 68  
 North, Lord, 223, 226, 227, 229, 255  
 Northumbria, 9  
 Noy, 154, 155

OCCASIONAL Conformity Act, 217  
 Odo of Bayeux, 24, 31, 37  
 Offa, 11  
 Orleton, Adam, 75

PALATINE Counties, 23  
 Palmerston, Lord, 241, 244, 246, 253  
 Parliament: of Oxford, 64; De

- Montfort's, 65; of 1295, 70; separated into two Houses, 76; powers of, 80; Good, 83; decline of, 89; revival of, 107; Added, 132; Short, 157; Long, 158; Barebones, 164; Cromwell's, 165; Restoration, 169; Victory of, 194; Reformed, 248  
 Parties, 185  
 Party Government, 192-212  
 Penryn, 246  
 Perrers, Alice, 79  
 Petition and Advice, 166  
 Petition of Right, 143  
 Philip II. of Spain, 115  
 Pitt. *See* Chatham  
 Pitt (the younger), 228, 240, 241, 243  
 Placemen, 205  
 Pole, Michael de la, 83, 84  
 Pole, William de la, 97  
 Premier, 211  
 Preston, 231  
 Privileges of Parliament, 126, 127, 136; abuse of, 221  
 Privy Council, 52; constitution of, 83; under Edward VI., 110; at Restoration, 117; Temple's council, 182  
 Proclamations, 89  
 Provisions of Oxford, 64  
 Prynne, 156  
 Pym, 133, 136, 157  
  
 REFORM, Parliamentary, 165, 238-249  
 Representation, 65  
 Retainers, 82  
 Retford, East, 246  
 Revenue, King's, 9, 39, 150, 171, 196, 226  
 Richard I., 55, 56, 57, 65  
 Richard II., 83-88, 129, 214  
 Richmond, Duke of, 240  
 Rights, Bill of, 192, 193  
 Robert of Normandy, 31, 32, 34  
 Roches, Peter des, 58  
 Rockingham, Marquis of, 221, 226, 227  
  
 Roger, Bishop of Salisbury, 37, 43, 44, 46  
 Rotten boroughs, 112. *See* Reform  
 Russell, Lord John, 246  
  
 SAC and Soc, 23  
 Saladin Tithe, 65  
 Salisbury, Cecil, 128, 138  
 Schism Act, 217  
 Scrope, 87  
 Scutage, 53  
 Settlement, Act of, 198, 205, 207  
 Sigebert, 8  
 Siward, 28  
 Shelburne, Earl, 227  
 Sheriff, 6, 97, 155, 233  
 Ship money, 155  
 Shire, 6  
 Shire-moot (County Court), 6  
 Shirley's Case, 127  
 Standing army, 95, 172, 191, 197  
 St. John (Bolingbroke), 209, 218  
 Star Chamber, 110, 111; abolished, 161  
 Statute of Westminster, 73  
 Statute of Winchester, 53, 70  
 Stephen, 28, 42, 43, 46  
 Stigand, 20  
 Strafford (Wentworth), 133, 143, 144, 145, 146, 149, 150, 158, 159  
 Stratford, Archbishop, 77  
 Strickland's Case, 117  
 Stuart, Arabella, 131  
 Subsidy, 135  
 Suffolk (Michael de la Pole), 83, 84  
 Suffolk (De la Pole), 97  
 Sugar, 37  
 Sunderland, Earl of, 200  
  
 TACITUS, 2, 7  
 Temple, Lord, 228  
 Temple, Sir William, 182  
 Test Act, 181  
 Thegn (Thane), 3  
 Toleration Act, 217  
 Tonnage and poundage, 129  
 Topcliffe, 95

- 
- Tories, 185 ; revival of, 218  
 Torrington, 233  
 Treason trials, 198  
 Treasurer, 36, 38  
 Treasury, First Lord of, 211  
 Triennial Act, 159, 173  
  
 UNITED States, 206, 254, 256, 257  
  
 VERE, de, Earl of Oxford, 84, 85  
 Villiers (Buckingham), 131, 134,  
     139, 140, 142, 144, 146  
  
 WALPOLE, Sir Robert, 202, 204,  
     210  
 Walter of Coutance, 57  
 Walter Hubert, 57  
 Warwick, Earl of, 98  
  
 Wellington, Duke of, 247, 248  
 Wentworth, Peter, 117  
 Whigs, 185 ; sections of, 219  
 Wilfred, 8  
 Wilkes, 222, 223, 224, 239  
 William I., 14-49, 52, 65, 81  
     — II., 30, 31, 37, 40, 52  
     — III., 170, 191, 192-201  
     — IV., 230  
 Witenagemot, 6 ; constitution of,  
     7 ; becomes the magnum con-  
     cilium, 40  
 Wolsey, 96, 98, 104, 105, 106, 211  
 Woodvilles, 98, 99  
 Wykeham, William of, 78, 79  
  
 YORK, Edmund, Duke of, 83  
     —, Richard Duke of, 74

